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New York

President:	Sir Emyr Jones Parry	(United Kingdom of Great Britain and Northern Ireland)
Members:	Angola	Mr. Gaspar Martins
	Bulgaria	Mr. Yotov
	Cameroon	Mr. Belinga-Eboutou
	Chile	Mr. Muñoz
	China	Mr. Zhang Yishan
	France	Mr. Duclos
	Germany	Mr. Much
	Guinea	Mr. Boubacar Diallo
	Mexico	Mr. Aguilar Zinser
	Pakistan	Mr. Khalid
	Russian Federation	Mr. Karev
	Spain	Ms. Menéndez
	Syrian Arab Republic	Mr. Mekdad
	United States of America	Mr. Rostow

Agenda

Justice and the Rule of Law: the United Nations role

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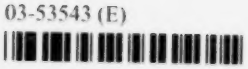

The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

Justice and the Rule of Law: the United Nations role

The President: I should like to inform the Council that I have received letters from the representatives of Argentina, Australia, Austria, Azerbaijan, Bahrain, Brazil, Canada, the Democratic Republic of the Congo, Denmark, Finland, Italy, Japan, Jordan, Liechtenstein, New Zealand, the Philippines, the Republic of Korea, Romania, San Marino, Serbia and Montenegro, Sierra Leone, Sweden, Switzerland, Trinidad and Tobago, and Uruguay in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Cappagli (Argentina), Mr. Dauth (Australia), Mr. Pfanzelter (Austria), Mr. Aliyev (Azerbaijan), Mr. Almansoor (Bahrain), Mr. Sardenberg (Brazil), Mr. Heinbecker (Canada), Mr. Ileka (Democratic Republic of the Congo), Ms. Løj (Denmark), Ms. Rasi (Finland), Mr. Spatafora (Italy), Mr. Haraguchi (Japan), Mr. Al-Hussein (Jordan), Mr. Wenaweser (Liechtenstein), Mr. MacKay (New Zealand), Mr. Baja (Philippines), Mr. Kim (Republic of Korea), Mr. Motoc (Romania), Mr. Balestra (San Marino), Mr. Šahović (Serbia and Montenegro), Mr. Kanu (Sierra Leone), Ms. Fogh (Sweden), Mr. Helg (Switzerland), Mr. Gift (Trinidad and Tobago) and Mr. Palolillo (Uruguay) took the places reserved for them at the side of the Council Chamber.

The President: In accordance with the understanding reached in the Council's prior consultations, and in the absence of objection, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations.

There being no objection, it is so decided.

I invite Mr. Guéhenno to take a seat at the Council table.

The Security Council will now continue its consideration of the item on its agenda.

May I start by saying how welcome Jean-Marie Guéhenno is with us as the Under-Secretary-General for Peacekeeping Operations. I understand that he and his colleagues are ready to answer questions which may arise during the discussion.

The Secretary-General spoke last week of the heavy responsibility of the Council in the promotion of justice and the rule of law. As he said, the rule of law is not a luxury, and justice is not a side issue. It was that conviction that led us, as the presidency, to bring this issue before the Council. We are grateful for the contributions that were made by Council members last week, but we have never seen this as an issue exclusively for the Council. Last week's meeting was the start of a process. The second stage of that process is the debate that we are about to engage in. Today the wider United Nations membership and other parts of the United Nations system with relevant expertise have an opportunity to contribute to the process of reflection and analysis that we began last week. We very much hope that this will lead, under the guidance of the Secretary-General's further contributions, to a more effective and efficient handling of justice and rule of law issues in the work of the Council and, perhaps more importantly, in the wider United Nations system and the international community generally, so that we will be better prepared to confront problems when they arise.

This discussion provides an ideal opportunity to hear the views of the wider membership. I would like simply to note that there are 25 speakers on the list, which means that if each one speaks for five minutes, the meeting will last for two hours and 10 minutes, whereas if each one speaks for 10 minutes, the meeting will last for four hours and 20 minutes. That is the mathematics of it. I therefore appeal to speakers to be as concise as possible. There is absolutely no impediment to the subsequent circulation and distribution of written texts, all of which will be studied by the presidency and the Secretariat as part of the follow-up.

In order to optimize the use of our time, I will not individually invite speakers to take seats at the table. When a speaker is taking the floor the Conference Officer will seat the next speaker on the list at the table.

I first give the floor to Mr. Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations.

Mr. Guéhenno: I would to thank the United Kingdom, as the presidency of the Security Council, for having convened the meetings on justice and the rule of law. I am heartened that the ministerial meeting last week, and earlier consultations in the special committee, suggest emerging unanimity among Member States about the critical role of the rule of law in building a sustainable peace in post-conflict settings.

I am speaking today on behalf of several United Nations departments within the Secretariat and United Nations entities that are engaged in supporting justice and the rule of law in post-conflict societies, among them the Department of Political Affairs, the Office of the High Commissioner for Human Rights, the Office of Legal Affairs and the Department of Peacekeeping Operations.

The restoration of the rule of law is a sine qua non for the sustainable resolution of conflict and the rebuilding of secure, orderly and humane societies. If the aim of the United Nations is to prevent conflict and relapses into conflict, it seems self-evident that promotion of the rule of law should be among the priority concerns of the international community.

Too often, however, we have failed to give this critical sector the importance it is due. Too often, our rule-of-law activities have been considered a subset of our so-called real mandate — either because we were not provided with an adequate mandate to carry out rule-of-law activities in a comprehensive manner, because we had done insufficient planning to be able to hit the ground running, because we had inadequate access to resources and expertise — or for all of those reasons.

We have witnessed, time and again, a population's loss of faith in a peace process owing to the absence of security and lack of accountability for criminal acts. We have been present in countries where, even a year into the peace process, courts do not function in even a rudimentary way; lawyers, prosecutors and judges are scarce or untrained; and the population feels it has no real recourse under the law.

We can no longer afford to treat the rule of law as a side activity in which we engage alongside political objectives. In many cases, it lies at the heart of the success or failure of our peacekeeping operations. It is time, therefore, to fundamentally rethink the way in which we address the rule of law in post conflict societies.

This does not mean that the United Nations has neglected the rule of law. On the contrary, many parts of the system have worked in this field for years, and our multidimensional peacekeeping operations demonstrate our broad involvement in the promotion of the rule of law. From policing, judicial reform and corrections, to child protection, human rights and electoral assistance, our operations worldwide are engaged in a range of activities aimed at reinforcing justice and the rule of law. Much of this work is carried out in a system-wide partnership and with our non-governmental organization partners. Yet, in spite of the efforts expended, the results of our work have been decidedly mixed.

In some cases, the failure of a peace agreement to address rule-of-law concerns has tied the hands of the United Nations. It is essential, therefore, to ensure that the rule of law figures more prominently from the early stages of peace negotiations onwards.

Equally, the rule of law must be recognized as a key element of any post-conflict effort — and this must be reflected by political actors and donors when drafting peace agreements, adopting and interpreting peacekeeping mandates and funding programmes. This issue surfaced in Bosnia and Herzegovina, for example, when ambiguities in the United Nations mandate were interpreted very narrowly as being limited to traditional policing functions, rather than including broader support for the justice sector. It was not until July 1998 — two and a half years after the Dayton Peace Agreement — that the Security Council passed a resolution that specifically referred to legal reform and authorized the United Nations Mission in Bosnia and Herzegovina to engage in monitoring and assessment of the judicial sector. The loss of valuable time may explain why we were unable to achieve the same level of progress in the judicial sector as we did with the police.

In contrast, transitional administrations in Kosovo and East Timor have provided the United Nations with broad mandates and authority in the area of the rule of law, bringing to light a number of important lessons and paving the way for subsequent operations that dealt more effectively with that crucial sector. In the case of Kosovo, Member States were not organized to provide us with qualified personnel, especially police, quickly enough, which slowed our deployment. As the first of two interim administration missions, we had not appreciated the need for international judges and prosecutors or a full cadre of corrections personnel. We lacked budgeted funds even to provide pencils and paper to the new national judiciary. We were unsuccessful, for several months, in appointing a sufficient number of local judges and prosecutors to get the judicial system up and running.

After a difficult start, international judges and prosecutors are now active in Kosovo, handling the most sensitive war crimes and inter-ethnic crime cases. As a check on corruption and misconduct, we have instituted a Judicial and Prosecutorial Council, which is involved in the appointment of judges and prosecutors and in disciplinary matters. Pillar III of the United Nations Interim Administration Mission in Kosovo (UNMIK), which is led by the Organization for Security and Cooperation in Europe, has established a judicial training centre, a trial monitoring programme, a Criminal Defence Resource Centre and an Ombudsman Institution. It has also assisted the Kosovo Bar Association in restarting its activities.

Despite these successes, UNMIK has difficulty recruiting qualified international judges and prosecutors. Ethnic bias can still taint cases handled by the local judiciary. And the recent riot, and tragic deaths, in the Dubrava prison, represent a serious setback in our efforts to develop and administer the corrections system.

Since the establishment of the missions in Kosovo and East Timor, we have learned — perhaps the hard way — that significant assistance in the judicial and corrections areas should not be limited to interim administration missions.

At the same time, it has become clear that United Nations effectiveness in promoting the rule of law in many parts of the world has been hampered by the inadequacy of our mandates and resources, both at Headquarters and in the field. Indeed, while the Security Council recognizes that activities such as disarmament, demobilization and reintegration, elections and policing are essential elements of a peacekeeping mandate, other rule-of-law activities are often included only in relation to law enforcement efforts.

I cannot overemphasize, however, that the maintenance of peace and security requires the establishment of the rule of law in post-conflict settings; and the establishment of the rule of law requires more than just a focus on policing. It requires that all components of the criminal justice chain — the police, the judiciary, the defence bar, prosecutors and corrections — be included and funded.

In the case of Liberia, the Secretary-General recommended that we address the criminal justice chain in a comprehensive manner, and those recommendations were adopted, albeit with some hesitation, by the Security Council. Liberia will be a real test of our ability to move beyond a piecemeal approach to the rule of law and lay the foundations for a truly just and peaceful society.

In addition, focusing on the full criminal justice chain may prove to be a more effective and efficient use of resources which, in the long run, does more to prevent relapse into conflict and saves both dollars and lives. And, as far as costs are concerned, judicial and corrections mission components are quite small when compared with the more substantial costs of deploying large military forces or police-training and restructuring programmes. In short, support for the rule of law is a good investment.

In light of last week's ministerial statements, let me highlight some of the steps that we have taken over the last year to enhance our rule-of-law capacities. And today is a fitting day to do so, given that it was one year ago today that the Executive Committee on Peace and Security (ECPS) approved the recommendations of its rule-of-law Task Force.

Recognizing the need for peacekeeping operations to address the entire criminal justice chain, we established, in February, the Criminal Law and Judicial Advisory Unit within the Civilian Police Division of the Department of Peacekeeping Operations, with two staff members dedicated to criminal law, judicial and corrections issues. This is a good start, but in order to make good on our stated

commitment to the rule of law, the Unit will need significant additional resources.

Rule of law focal points in 11 United Nations departments and agencies now confer regularly on rule-of-law issues that arise in peacekeeping. It remains to be seen, however, whether the network will fulfil its potential of providing support to the Unit on the core aspects of its rule of law work, as the ECPS Task Force recommended.

We are, however, beginning to see concrete results from this initiative, providing evidence of the degree to which the rule of law has come to be recognized as a standard element of peace-building efforts. Recently, for example, we have conducted rule-of-law assessments in Afghanistan, Iraq, the Democratic Republic of the Congo — in Bunia specifically — Liberia. Those in the Democratic Republic of the Congo and Liberia were conducted, probably for the first time, by police, judicial and corrections experts working together in an integrated fashion, as had been recommended by the Brahimi panel report.

The Criminal Law and Judicial Advisory Unit is also exploring the desirability of establishing a Rule of Law Trust Fund as one way to draw upon the resources and the expertise of entities outside the United Nations system — including governmental, non-governmental and intergovernmental organizations — to support rule-of-law aspects of peace operations. In the coming months, we hope to discuss with interested Member States our recommendations on how best to designate voluntary funds — through existing or new mechanisms — for rule-of-law initiatives in peace operations.

I will now turn to the subject of post-conflict justice. By this, I mean the process whereby those who have committed the most serious violations of international humanitarian law — genocide, war crimes, crimes against humanity and grave breaches of the Geneva Conventions — are held accountable and punished.

The United Nations has attempted to meet the challenge of post-conflict justice in the former Yugoslavia, Rwanda, Kosovo, East Timor, Sierra Leone and Cambodia. Both the United Nations and the Security Council can draw a number of useful lessons from these experiences.

First, the international tribunals that the United Nations has established, or helped to establish, have proved that it is possible to deliver impartial criminal justice on the international plane.

By and large, though, the international tribunals have so far not always proved to be efficient or effective instruments for prosecuting and trying those suspected of the most serious crimes, and they have been too slow and too costly. This is certainly so in the case of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and it appears that the same might prove true in the case of the Special Court for Sierra Leone.

Secondly, if the international community limits its response to post-conflict situations to the creation of traditional criminal justice mechanisms such as courts, focused on delivering retribution and meting out punishment, then it will fail to respond to many of the expectations that victims and "victim societies" have concerning mechanisms of post-conflict justice, in particular reparation, a full accounting of what happened and national reconciliation.

Among other judicial or quasi-judicial mechanisms, truth and reconciliation commissions seem to offer the best prospects for meeting the various expectations and demands both of individual victims and of the societies from which they come. But if courts alone are not enough, neither are truth and reconciliation commissions.

Thirdly, creating specialized courts, whether at the international or the national level, does little to help re-establish the rudiments of the rule of law in post-conflict societies. Indeed, creating such specialized institutions may divert resources from support for the rebuilding and operation of the "ordinary" court system.

Ideally, these crimes should be addressed within the framework of the ordinary court system, which may require the assignment or the allocation of prosecutors and judges who have the requisite expertise and other forms of specialized assistance.

There is much that the Security Council can do to facilitate our efforts in the field of the rule of law. In terms of addressing post-conflict justice, the practical lesson to be drawn is that we should conduct case-by-case assessments of the range of mechanisms available,

rather than relying solely on the establishment of ad hoc institutional mechanisms. In addition, there should be a move towards broader assistance and support to national justice systems.

We must also ensure that any amnesty clauses in peace agreements exclude amnesties for war crimes, genocide, crimes against humanity and other serious violations of international human rights and humanitarian law. When domestic justice capacities have collapsed, we must mandate interim measures, including international support for the establishment of temporary courts, policing capacities and detention facilities, and the provision of provisional codes for criminal law and procedure.

Our assessment report for Liberia offers another example of how Member States can help bolster our achievements in the rule of law. It recommends components that would assist in the training of Liberian legal professionals, provide advisers to work alongside national counterparts in judicial reform efforts, engage in trial monitoring to protect human rights and improve the functioning of the judicial system, and support and monitor the corrections system. We look to Member States to support these strategies.

Staffing remains one of our greatest challenges. We must ensure that we have access to high-quality police, corrections and judicial officers to complement the work of our own staff experts, ensure that that personnel are trained in international human rights standards and that we deploy them to the field as quickly as possible. We must also keep in mind the need for broad geographic representation, which can be difficult to achieve, particularly in our missions in Africa, where some of our largest police contributors are reluctant to participate.

Equally challenging is the issue of gender. Indeed, only 3 per cent of our police and corrections officers seconded to peace operations are women. Experience in the broad range of legal systems found in United Nations Member States — whether civil law, common law, Islamic law, or other systems — is also crucial. These are other areas in which we need your urgent assistance.

In addition to providing individual personnel for rule-of-law activities, Member States can assist by providing staff for an entire sector. This is what the United Kingdom has done in Kosovo, by providing staffing for an entire criminal investigation unit.

Another model is for Member States to serve as lead nation for assistance to a particular sector. In Afghanistan, for example, Germany is in the lead for policing and Italy for the justice sector. We must also explore stand-by arrangements whereby Member States commit to providing an integrated package of resources and personnel as soon as the need arises. This was attempted in East Timor, but with very little success. Without significant assistance from Member States, however, the United Nations will not be able to carry out these complex mandates.

(*spoke in French*)

We all recognize that, while there is a wealth of universal norms and standards developed by the United Nations in this field and through their experience in the field, there is no single approach to justice and the rule of law. We must begin with sound assessments on the ground to determine if our assistance is needed. Any strategies we adopt must be tailored to the needs and conditions of the host country and must have as its primary objective the promotion of national ownership of their justice system and capacity-building.

We must avoid the mistakes of the past, where imported solutions failed to take into account local culture and traditions and our activities were sometimes carried out without adequately consulting national actors.

Indeed, those who will ultimately be subject to the system of law to be established have far more at stake than we do and must take the lead in developing and implementing any strategy for reform of the criminal justice sector. And we must ensure that the reference point for all of our work is international norms and standards — whether in the area of human rights, international humanitarian law or criminal law.

The United Nations is learning lessons from past experiences, strengthening its capacities, and developing new ways to work together more efficiently and more effectively. What remains to be seen, however, is how effective we — the United Nations Secretariat, our other United Nations system partners, the Security Council, Member States, and outside entities who are able to contribute — will be in effectively developing peacekeeping mandates, by determining budgets that are appropriate to needs, by

deploying human and material resources that are equal to the challenge, and — most difficult of all — by taking into account, with a sense of realism, the difficulties we will face in the field.

We cannot hope to effectively assist in building stable, peaceful societies if the crucial area of the rule of law is neglected. We have been in the peacekeeping business for more than half a century now, and we will have failed in our responsibility to suffering populations throughout the world if we neglect to learn and apply the lessons of the past half a century.

I hope that we can count on your continued support and commitment as we strive to ensure that the rule of law obtains the central, strategic role that it merits in all peacekeeping efforts.

The President: The next speaker on my list is Mr. Marcello Spatafora, the Representative of Italy, speaking on behalf of the European Union.

Mr. Spatafora (Italy): I have the honour to speak on behalf of the European Union (EU). The acceding countries, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the associated countries, Bulgaria, Romania and Turkey and the European Fair Trade Association (EFTA) countries, members of the European Economic Area, Iceland and Norway, align themselves with this statement.

Justice and the rule of law are at the core of the peaceful settlement of disputes and of harmonious coexistence both at the national and international level. The failure of national systems and the unfolding of international crises are often consequences of the collapse of justice, infringements on the rule of law and the perpetration of heinous crimes and violations of human rights.

The EU, which is a community built upon mutually agreed-upon principles of law, remains convinced that an essential element to sustained stability in a post-conflict environment is the strengthening and consolidation of local rule-of-law capacity.

During the last decade the nature of armed conflicts has radically changed as the number of internal conflicts has increased rapidly. In this context the United Nations has often been called upon to intervene in the reconstruction of national societies disrupted by atrocious conflicts.

This in turn has implied a major change, both in the nature and in the scope of United Nations post-conflict peace operations. The Security Council has placed increasing emphasis on the need to restore justice and the rule of law at the local level when this is not achievable through intrinsic processes in the short run.

As a consequence, the United Nations is increasingly being involved in post-conflict reconciliation and transitional justice. The results achieved so far are encouraging in Kosovo, Cambodia, Timor-Leste, Sierra Leone, the Democratic Republic of the Congo and Afghanistan. Liberia will be the next important test case, as the Secretary-General reminded us last week. The EU is fully aware that each of these situations has its own characteristics which, accordingly, must be addressed. Nevertheless, further efforts must be made to draw lessons from current experiences in order to assess the effectiveness of United Nations actions in this area and to identify guidelines for the future.

The international community is sometimes called upon to intervene in order to put an end to impunity for the most heinous international crimes. In such situations, the establishment of ad hoc international criminal tribunals or the setting up of national courts with varying degrees of international assistance has made an important contribution to reconciliation in emerging, post-conflict societies.

The EU also strongly believes that the International Criminal Court provides a powerful, permanent instrument of deterrence against such crimes. The EU will remain firmly committed to its effective functioning. The Court does not aim at replacing domestic jurisdictions. It may assume responsibility as a last resort and only when a State is unable or unwilling to do so. The Court is not just a judicial institution, designed to prevent and put an end to the impunity of the perpetrators of serious crimes, it is also an essential means of promoting respect for international humanitarian law and human rights law, thus contributing to freedom, security, justice and the rule of law, as well as to the preservation of peace and strengthening of international security.

The EU supports the concrete proposal made by several of its member States at the ministerial level meeting of the Security Council on 24 September. It considers that rule-of-law elements should be included,

as appropriate, in mission mandates. To that end, we support the strengthening of United Nations capacities in the rule of law, the enhancing of system-wide coordination within and outside the United Nations and the improving of consultations with Member States to mobilize their available resources and expertise.

Furthermore, the European Union (EU) supports the formation of legal assessment teams comprised of civilian police and other rule-of-law elements, as appropriate, to help in the planning process for new missions. These teams should participate in reconnaissance missions in the field to evaluate the needs of the host country and create an environment in which the application of and adherence to the rule of law can be achieved. Specific attention should be devoted, inter alia, to promoting the establishment of legislative transparency, reliable civilian police structures, an independent judiciary, the right to a fair trial and a penitentiary system. We welcome the offer by the Secretary-General to provide a report to promote further consideration of these matters, and we look forward to assisting him in that endeavour.

Accepting and promoting this new approach entails the assumption of new responsibilities on the part of the United Nations. The EU believes that in accomplishing these tasks, the United Nations should continue to explore all possible forms of cooperation with international organizations and institutions that can provide experience and expertise. In that regard, the EU seizes this opportunity to reaffirm its readiness to actively contribute to restoring the rule of law at the local level in situations where the Security Council considers that support for such processes by international organizations might be needed.

Since 2001, the Council of Europe has consistently recognized transitional justice and the rule of law as one priority area in the EU's crisis management operations and has set concrete targets for developing the relevant capacities. The joint declaration on United Nations-EU cooperation in the area of civilian and military crisis management, signed last week in New York by the United Nations Secretary-General and the Italian Presidency of the EU, is intended as an additional tool available to the United Nations to achieve its targets. It will contribute deepening cooperation between the United Nations and the EU and providing it with reliable and sustainable mechanisms. The EU confirms its commitment to ensure an early and concrete follow-up to the joint declaration.

The EU remains convinced that the success of any mission to establish the rule of law largely depends on the capacity and readiness of local actors to be fully involved from the beginning in reaching the objectives. As a principle, local law should be applied as widely as possible. Prompt building of capacities and subsequent hand-over to local ownership are essential.

The EU therefore fully subscribes to the Secretary-General's statement last week before the Security Council: "Local actors must be involved from the start ... We should, wherever possible, guide rather than direct, and reinforce rather than replace. The aim must be to leave behind strong local institutions when we depart." *(S/PV.4833)*

The President: I now give the floor to the representative of Japan.

Mr. Haraguchi (Japan): Article 1 of the United Nations Charter stipulates that one of the purposes of the United Nations is to bring about the settlement of international disputes by peaceful means and in conformity with the principles of justice and international law. After 58 years, this purpose is still a very important one for this Organization. Indeed, the role played by the United Nations is all the more important now that there is an increasing need, as globalization advances, to address a variety of international problems that transcend national borders.

In the international community, where no integrated government exists as yet, there is no legislative or judicial organ with enforcement authorities. Treaties require the consent of participating States to become binding. International courts also need general or specific agreement by the parties for disputes to be referred to them.

However, States tend to hesitate before subjecting themselves to legally-binding agreements and decisions that restrict their latitude on many issues, including such wide-ranging matters as the environment, human rights and trade and investment, which are complex and greatly affect national interests.

In the present international community, establishing the rule of law, while important, is not an easy task. It is essential first of all, therefore, to create a framework for agreements in which as many States as possible will participate. Merely pursuing ideals will

not produce effective results if the participating countries are limited in number. In this sense, given the Organization's comprehensive membership, the law-making functions of the United Nations system — in which extensive discussions are conducted to promote understanding among Members — is extremely important. In addition, the Security Council is authorized under Article 25 of the Charter to make legally-binding decisions in the area of the maintenance of international peace and security. The Council is making an increasing number of critical decisions, particularly in the post-cold war era.

The Japanese Government attaches great importance to the United Nations role in this area. In this context, we welcome the initiative of the British Presidency this month to place this issue on the agenda of the Security Council. I would like to take this opportunity to touch upon the views of my Government regarding some recent developments related to this subject.

First, as regards developments in international criminal justice, it is unjust to allow those who have committed serious crimes to go unpunished; such inaction renders society and the State corrupt. When society or the State, alone, cannot bring such criminals to justice, it is important for the international community to shoulder its responsibility and contribute to the creation of a post-conflict order and a base for economic and social development, as well as to the achievement of universal justice. It is also in the interest of the international community, as it will serve to deter similar crimes in the future.

In the 1990s, the Security Council established International Criminal Tribunals for the former Yugoslavia for Rwanda. This represented a great advance in the development of international criminal justice. The Special Court for Sierra Leone was also established, based on a request by the Security Council. Japan supports such a role for the Council. We share the concern expressed by Foreign Secretary Straw in the Council meeting last week, however, that the Tribunals for the former Yugoslavia and Rwanda are proceeding slowly and at considerable financial cost. We request the Security Council to conduct rigorous monitoring, so that those Courts conduct the trials efficiently and that they complete their mandates expeditiously.

The United Nations should also make an important contribution to the Khmer Rouge trials. The Government of Japan, together with France, have put forth initiatives for the adoption of the relevant resolutions in the General Assembly. We hope that the court would begin its activities without delay and thereby contribute to the achievement of justice in Cambodia.

It may be said that the most important recent development in international criminal justice is the birth of the International Criminal Court (ICC). The Government of Japan has consistently supported the establishment of the ICC and welcomed it when the Rome Statute came into force. In order for the ICC to be effective and universal, it is necessary for a large number of countries to be able to regard the Court as their own. We therefore consider it crucial that the ICC meet the expectations of as many countries as possible in conducting its activities.

Secondly, there is the task of combating terrorism and ensuring the safety of United Nations and associated personnel. The eradication of terrorism is a challenge to the international community as a whole. The United Nations is playing an important role through its championing of international conventions and protocols to ensure that terrorists are brought to justice and through its measures to prevent terrorism.

The international community was shocked by the terrorist attack on United Nations headquarters in Baghdad, which caused so many casualties. We welcome resolution 1502 (2003), adopted by the Security Council after the attack, as an important step for the protection of humanitarian personnel and the United Nations and its associated personnel. We consider it necessary to conduct further discussions on this matter, including the expansion of the scope of protection in our deliberations, with a clear understanding of the existing Convention on the Safety of United Nations and Associated Personnel.

Thirdly and lastly, placing importance on justice and the rule of law is an essential element in promoting human security and furthering economic and social development. Where no justice or rule of law exist, frustration and bitterness will accumulate, and a society that is supposed to be united for development will instead become fragmented and divided, and descend into a vicious circle of conflict and poverty.

In this context, assistance from the international community for legal system-building in post-conflict periods is critically important, because it will contribute to the establishment of the rule of law and the prevention of future conflict, as well as to the creation of a base upon which to promote nation-building and development. It is from this point of view that the Japanese Government has been extending assistance of various kinds to Cambodia, Timor-Leste and other countries, in areas such as the formulation of basic laws and the development of human resources for judicial institutions.

We are also encouraged to see that contributions in this area have been strengthened in the peace operations of the United Nations. Moreover, the United Nations Asia and Far East Institute, which was established by agreement between the United Nations and Japan, has been contributing for 40 years to capacity-building in crime prevention and criminal justice by conducting activities that include the training of experts in the Asia-Pacific countries. We would like to request that the report to be provided by the Secretary-General on today's discussion include an evaluation of the assistance provided to date by United Nations organs, including the Security Council, and by Member States, respectively, and recommendations regarding the kinds of assistance that might be provided in the future.

I hope that today's meeting and the one held on the 24th of this month will provide guidance for the future work of the United Nations, and I look forward to the report of the Secretary-General.

The President: The next speaker on my list is the representative of New Zealand.

Mr. MacKay (New Zealand): No principle is closer to the heart of the work of the United Nations than that of justice. The links with the particular role of this organ to maintain and restore peace and security are very clear. This link has obviously been increasingly recognized by the Council in recent years. There has been reference, for example, to the international tribunals that have been established, and to the incorporation of rule of law elements in the mandate of missions such as the one in Kosovo.

But many of these developments have been ad hoc, and we therefore welcome the proposal that this debate emanates from, that greater thought be given to how to address rule of law issues in a systemic and comprehensive way in the Council's work.

Given the many elements that are involved in establishing the rule of law, much will depend on effective coordination within the United Nations system and among the agencies involved.

Too often, conflicts are marked by crimes committed by the very people and institutions that should protect and defend the law. In order to restore stability and rebuild respect for those institutions, it will often be necessary to rebuild all aspects of the legal system. The extent of this task, and the need for regional or international assistance, will clearly vary from situation to situation. But, in our view, promoting national ownership and capacity-building is one of the most important aspects of international involvement in a post-conflict environment. As Mr. Guéhenno has made very clear, however, the rule of law needs to be regarded as a core function of post-conflict peace- and nation-building operations, and not as an optional "extra".

Again, Mr. Guéhenno has indicated that one of the Council's first tasks in a post-conflict situation will be to complete an assessment of the existing systems in order to determine what assistance is needed. We would suggest that it could therefore be useful to establish registers or panels of experts that the Council could draw on to assist in completing these assessments. Such panels should be representative of each of the world's regions. In compiling the panels, the Council could also draw on the expertise contained in many regional or other international organizations, including many non-governmental organizations.

A fundamental element of re-establishing respect for the rule of law is also delivering justice for the victims of crimes or atrocities committed during the period of conflict. Again, in our view, the national courts should, where possible, be the first line of prosecution.

That said, however, there will clearly be instances where the nature and the gravity of the crimes, the political situation or, indeed, the capacities of the national system will mean that it will be necessary to turn to an international process. In this situation, we would very much encourage the Council to take advantage of the International Criminal Court (ICC). We fully understand the sincerity of those countries that have reservations about the Court, but we are

confident that its operations will, in fact, assuage those concerns. We therefore hope that the Council will cooperate with the ICC within the framework of the Rome Statute and the Charter, and that it will refrain from actions that would undermine the effective operation of the Court.

Finally, may I briefly refer to the usefulness of complementary mechanisms such as truth and reconciliation commissions. The dilemma, here, obviously, is finding the appropriate balance between justice on the one hand and national reconciliation on the other, because it will obviously not be possible to put an end to the culture of impunity for the gravest international crimes if amnesties are granted for them.

Again, we believe that local ownership and decision-making is very important. In most cases, the Council's role may be best by way of facilitation of the provision of technical assistance or guidance to the States concerned.

Finally, although this is not in the much more comprehensive written text that I have circulated, I should like to support the comments made by the Permanent Representative of Japan regarding the need to strengthen the regime under the Convention of the Safety of United Nations and Associated Personnel, which we also believe would make a significant contribution in this area.

The President: I now call on the representative of Serbia and Montenegro.

Mr. Šahović (Serbia and Montenegro): I should like to thank the British presidency for having convened a ministerial meeting on the very important topic of justice and the rule of law, as well as for this opportunity for the wider United Nations membership to contribute to the debate.

My delegation has listened with great interest to the interventions of the members of the Council and to the many concrete suggestions for strengthening the role of the United Nations in this field. Since my country has direct experience of United Nations efforts to promote justice and the rule of law, we would like to use this opportunity to offer a few observations on some aspects of this process, in relation to the United Nations Interim Administration Mission in Kosovo (UNMIK) and the International Criminal Tribunal for the former Yugoslavia (ICTY).

Before doing so, however, I should like to emphasize that my Government fully agrees with the virtually unanimous assessment that the establishment of the rule of law is of crucial importance for stabilizing societies emerging from conflict. Without it, the risk of new human rights violations and of a return to conflict remain real and permanent.

Secondly, we fully support the view that the role of the United Nations does not end with the physical separation of the parties to a conflict. Its task is fulfilled when firm foundations for peace, security and stability have been laid — the basic precondition for this being institutions that guarantee the primacy of law.

The United Nations established one of its largest and most comprehensive missions in my country, in the province of Kosovo and Metohija, in 1999. There were many references during the ministerial meeting to the role of UNMIK in securing the rule of law. We deem it necessary, however, to point out that the achievements in this field are far from satisfactory.

As we have repeatedly stated during Security Council meetings on Kosovo and Metohija, not a single perpetrator of ethnically motivated crimes has been apprehended that we are aware of. The inevitable consequence is the emergence of a culture of impunity with respect to violence against minorities. There have also been no major breakthroughs in fighting widespread organized crime.

Various reasons have been cited to explain such a state of affairs. In that context, my Government considers the insufficient number of international judges and prosecutors to be a significant cause for concern. According to the report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (UNMIK) of 26 June 2003 (S/2003/675), there are only 15 international judges and 10 international prosecutors serving in the local justice system and they handle only approximately 3 per cent of the criminal cases. In addition, the number of UNMIK staff dealing with police and justice issues is continuously being reduced. In our view, however, that segment of UNMIK's human resources should be strengthened, rather than weakened.

Owing primarily to the prevailing climate of insecurity, the chances for return of 250,000 internally displaced persons are diminishing. Of course, returns are among the most important stated aims of UNMIK,

along with the establishment of the rule of law and the protection of human and minority rights.

As has been stated in virtually all reports on Kosovo and Metohija, much remains to be done in establishing the rule of law. We therefore welcome the fact that the international community seems to recognize the need to adopt a comprehensive approach to supporting societies that need reconstruction, such as in Kosovo and Metohija, until the firm basis for a just society is in place. That approach must include better resources and expert assistance for the efficient reform of law enforcement and the judiciary.

In that context, we find very useful the suggestions presented during the Council's ministerial-level debate calling for the United Nations to establish a standing data base of experts, nominated by Member States, who would be available, if called upon by the Security Council or by States, to assist in these areas.

One of the significant contributions of the United Nations to managing post-conflict situations is the establishment of international criminal tribunals. The ad hoc tribunals have shown, within their scope, that no one is above the reach of international law. They have enabled the processing of a number of war crime cases in circumstances where national judiciaries were unable to do so. My Government recognizes that role of the tribunals. It also fully recognizes its obligation to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and is doing its utmost to fulfil that obligation.

In many respects, however, the tribunals seem to have a mixed record. For example, the fact that the ICTY was formed as an ad hoc body is not sufficient justification for its practice of changing its rules of procedure and evidence as it goes along. That can only lead to legal uncertainty, which obviously does not contribute to the strengthening of the rule of law.

Also, in the case of the ICTY at least, it is sometimes difficult for the wider public to make the necessary clear distinction between the Court and the Office of the Prosecutor. The Court, as an independent legal institution whose aim is to secure justice, is often overshadowed by the prosecution. In addition, there are differences in the perception of the purposes of the ICTY that distort the image of the Tribunal as an institution above political considerations. The ICTY has variously been defined: as a means of determining individual responsibility for the most serious war crimes, as a vehicle for reconciliation and as a venue for deciding what constitutes the historical truth about the conflicts in the former Yugoslavia.

It is our firm belief that the goal of any court of law, including ad hoc tribunals, must be to bring individual perpetrators of crimes to justice. The task of the tribunals is to concentrate on the top echelons of the chain of command that led to war crimes and crimes against humanity. On previous occasions, the Council has recognized that lower-level cases should be tried by national courts. We believe that the time is approaching when the ICTY should begin to refer the cases it deems appropriate to national jurisdictions. However, in that process the importance of international assistance in reforming and strengthening national judiciaries is paramount.

Allow me to conclude by saying that my Government views the establishment of the International Criminal Court as a major step forward in creating a lasting framework for promoting the aims of justice and the rule of law at the international level. The International Criminal Court is permanent and its jurisdiction was envisaged as universal. Therefore, it is not focused on one country in particular but on all perpetrators of war crimes, crimes against humanity and genocide. As was stated at the ministerial-level meeting, it does not represent victors' justice but is aimed at objectively determining individual responsibility in cases of the most serious violations of international humanitarian law. My Government supports that role of the International Criminal Court.

The President: I now call on the representative of Austria.

Mr. Pfanzelter (Austria): Austria fully endorses the statement made by the Italian presidency on behalf of the European Union, and I would like to elaborate on four aspects.

First, justice and the rule of law are the very foundation of our international system and the United Nations. International norms are the standards by which we assess right and wrong in international affairs. The statements made on 24 September and today give hope that the debate will continue and lead to a renewed understanding and strengthening of justice and the rule of law in the United Nations.

Secondly, justice and the rule of law are the cornerstones of peace, security and the stability of

States, especially in post-conflict situations. To that end, Austria has contributed substantially to the training of local police and State border and justice officials in Bosnia and Herzegovina and in Kosovo. As a member of the Human Security Network, Austria is a strong advocate of the rights of civilians, in particular children, in armed conflicts. Training for police and the judiciary and the establishment of child protection units, as well as raising awareness among combatants, are important in this regard. The recent mandate establishing the multidimensional United Nations Mission in Liberia is a positive example.

Thirdly, a priority for societies ravaged by war or internal conflict is to ensure that the perpetrators of the gravest war crimes and crimes against humanity are brought to justice. The Security Council has devoted increasing attention to this issue. Austria fully supported the creation of international criminal tribunals for Yugoslavia, Rwanda, Sierra Leone and Cambodia. However, for financial, political and practical reasons, the Security Council is not able to deal with all situations in which grave crimes have been committed. Austria therefore fully supported the establishment of the International Criminal Court, which by means of its subsidiary jurisdiction is designed to ensure that national authorities devote serious attention to their obligations to investigate and prosecute such crimes. The International Criminal Court thereby contributes to the efforts of the Security Council to ensure the respect of international law. Austria is confident that the United Nations and the International Criminal Court will cooperate successfully to achieve their common goal of strengthening the rule of law and justice in international relations.

Fourthly, among the foremost duties of the United Nations is ensuring and enforcing compliance with international norms. The Security Council has a special responsibility in that regard. A Council dedicated to the resolute implementation of international law is the best incentive for the implementation of law at the national and local levels.

In conclusion, I would like to thank the United Kingdom presidency for this excellent initiative and for the very welcome opportunity to debate the crucial issues of justice and the rule of law in the Security Council. We are looking forward to the follow-up of this process, which the presidency has so ably initiated.

The President: I now call on the representative of Liechtenstein.

Mr. Wenaweser (Liechtenstein): The issue before the Security Council is topical for a wide range of issues on the agenda of the Council, including conflict prevention and post-conflict peace-building. Observance of the rule of law is an essential element for the effective functioning of States and the promotion and protection of the rights of individuals. It is also a crucial ingredient in relationships between States and thus of a functioning multilateral system. Indeed, the Council is instrumental in upholding the rule of law and must therefore continue to act on the basis of clear rules in carrying out the tasks with which it is entrusted.

It is difficult to imagine effective application of the rule of law without permanent courts in place to enforce it. As far as relations among States are concerned, the primary competent body is obviously the International Court of Justice. When it comes to dealing with individuals who violate rules of international law applicable to them, the situation is slightly more complex. The principle of complementarity is a central concept in that respect. It is always preferable that States have in place an independent and effective judiciary that brings to justice those individuals who have committed serious crimes under existing international law.

The United Nations can play — and on many occasions has played — a decisive role in assisting States to enhance their national capacities to that end. This important function of the United Nations, both in post-conflict situations and in the context of conflict prevention, must be continued and enhanced. One important measure to that end is the proposed establishment of a pool of legal experts — including in the area of criminal justice — who can be called upon to provide legal assistance in the context of operations mandated by the Security Council, but also in the context of other activities, such as those carried out by specialized agencies and programmes.

Over the past decade, the Council has established ad hoc tribunals to deal with serious violations of international humanitarian and human rights law committed in the former Yugoslavia and in Rwanda. The ad hoc tribunals have played a valuable role in bringing to justice those who have committed the most serious crimes. At the same time, they have been

plagued by a variety of problems rooted in their ad hoc character — ranging from managerial to credibility issues — and the costs have proved to be quite unsustainable over a protracted period of time.

It became particularly clear from that experience that only a permanent international tribunal could serve the cause of international criminal justice while maintaining the necessary efficiency and credibility. Such a permanent body was established in 1998, when the Rome Diplomatic Conference adopted the Statute of the International Criminal Court (ICC). The Court is based on the very principle of complementarity that I mentioned earlier. It is meant, first and foremost, to ensure that States have effective and independent judiciaries in place to deal with the most serious crimes under international law. Only in the absence of such a judiciary — owing to the unwillingness or inability of the States concerned — the International Criminal Court can step in to deliver justice.

The Court poses a challenge and provides an opportunity for the United Nations system to continue and enhance its activities in the area of justice and the rule of law. Specialized agencies and programmes can play an invaluable role in helping States to build or solidify strong national judiciaries. In cases where States are not in a position to so, the ICC can step in and bring criminals to justice. It is thus clear that the Court can play a twofold role: first, in motivating States to strengthen their judicial mechanisms; and secondly, in assisting States — especially weakened States, during or after a conflict, for instance — in delivering justice in accordance with the Rome Statute.

The Security Council is, of course, given a particular role under the Statute. In fact, the relationship between the Court and the Council is one of the most carefully crafted aspects of the Rome Statute. Specifically, the Council is given the possibility of referring situations to the Court — a function that can be of particular relevance in situations of conflict or post-conflict transition, where States are most likely not to be in a position to deal with the crimes in question through their national mechanisms.

The vast experience of the United Nations makes it clear that justice and the rule of law are of central importance in conflict and post-conflict situations. Ending the climate of impunity and restoring the confidence of the people concerned can be indispensable elements in securing a peaceful transition. The United Nations system as a whole, and the Council in particular, should therefore further develop the instruments available to enhance the rule of law and to avail itself of existing institutions to that end.

In conclusion, I should like to thank the United Kingdom for initiating this process. We look forward to its continuation.

The President: I now give the floor to the representative of Romania.

Mr. Motoc (Romania): Romania fully associates itself with the statement made earlier by the representative of Italy on behalf of the European Union. I shall therefore limit my statement to a few complementary remarks.

I wish at the outset to thank you, Mr. President, for including consideration of the item "Justice and the Rule of Law: The United Nations Role" in your programme of work. We also highly commend you for having taken the initiative to convene in a timely manner this open debate on such a high-priority item as a follow-up to the Security Council meeting held on 24 September.

As a country that has put forward its candidature for membership of the Security Council from next January, we took special note of the following statement by the Secretary-General:

> "This Council has a very heavy responsibility to promote justice and the rule of law in its efforts to maintain international peace and security. This applies both internationally and in rebuilding shattered societies." (*S/PV.4833, p. 2*)

Romania attaches utmost importance to justice and the rule of law. Indeed, they are a major thread in the fabric of Romania's successful transition to democracy. It is true that the background in Romania's case is different from that of war-torn countries. However, as a country ravaged by dictatorship, Romania's evolution since December 1989 substantiates another sentence in the Secretary-General's statement: "... the rule of law is not a luxury and ... justice is not a side issue." (*Supra*)

As a country that struggled to rebuild a democratic society based on the rule of law, on a

market economy and on respect for human rights, we have a more immediate understanding of the complex challenges of transition now facing other countries. Transition is not an easy process, yet it is the only way to reach durable economic prosperity and social cohesion for the people. Equally important, the role played by the rule of law in a society has a tremendously formative influence on the shaping or consolidation of national identity.

The community of democracies cannot be built without the solidarity of democracies. Romania knows the meaning of democratic solidarity, since we benefited extensively from the support of the democratic community after the breakdown of the oppressive communist regime. The assistance of various United Nations bodies and agencies is gratefully acknowledged.

In other cases, justice and the rule of law are inseparably connected to peacekeeping, to crisis prevention and to conflict management. We support a strengthening of the central role of the United Nations in its worldwide efforts to that end.

Romania welcomes the embedding of components of justice and the rule of law in the terms of reference for United Nations peace operations and for United Nations missions in general. Here, we see a valuable response to the challenges of multidimensional peacekeeping in post-conflict stages. Without the rule of law — the backbone of any functioning society — one cannot make people trust democracy, and consequently one cannot make them talk peace to one another. The mandate for the future United Nations Mission in Liberia, which was agreed through resolution 1509 (2003), sets a standard in that regard.

Kosovo is another case in point. The rule of law and an adequate law enforcement system are the most important priorities for any positive evolution there. In that respect, Romania fully agrees with the Special Representative of the Secretary-General for Kosovo, Mr. Harri Holkeri, who made the rule of law a top priority of his new tenure.

Atrocities and injustices brought by civil wars and by State repression can easily fuel new cycles of violence. Impunity may undermine trust in the legal system, thereby increasing the risk that vigilante justice will be resorted to, which encourages further atrocities. Mistrust and hatred between former adversaries inhibit political reconstruction, decision-making and economic development. Against this reality, Romania looks to the Security Council to continue to build upon its contribution in recent years to various dimensions of justice and the rule of law. The International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone and the International Criminal Court are important steps in the right direction.

Romania reiterates its commitment to the goals and principles of the Rome Statute of the International Criminal Court, an institution that reflects universal aspirations to the rule of law and the achievement of justice.

The track record shows that comprehensive disarmament, demobilization and reintegration of former combatants are among the first requirements for the rule of law, as we know it, to really take off in post-conflict stages. Long-term investments in education, training and family and community support must be on top of reconstruction processes.

The involvement of the United Nations and the international community in these stages has gradually expanded to include assistance in the creation of sustainable government, security and legal institutions. We share the views of those speakers who pointed out that, eventually, real progress in achieving justice and the rule of law depends largely on local actors. Multilateral and bilateral assistance should be conducive to justice and the rule of law effectively permeating the targeted region or country and reaching the stage of sustainable local ownership.

That implies a need to engage civil society from the start, which will ensure that the specific character of each society — its culture and identity — is duly taken into account. The international community must provide greater resources and expert assistance in that respect.

Furthermore, the United Nations goals and concrete activities related to justice and the rule of law in post-conflict countries should be placed in a comprehensive and coherent framework that includes police reform, good governance and a functioning and accountable system of public administration. Perhaps no less essential is the balance that should exist between justice and the rule of law themselves, between the goals of justice and those of reconciliation, or between the demands of peace and those of justice.

From the same perspective, it would be worthwhile to corroborate the conclusions drawn following the Security Council's consideration of the theme with the ideas emerging from similar endeavours in other United Nations bodies and agencies, as well as in other international and regional forums active in this area.

A wider and integrated approach would further help the United Nations and Member States identify current trends, recent experience, practical lessons and challenges for national and international initiatives to foster reconciliation, peace, stability and development in post-conflict societies. By the same token, that will lead to improved decisions by the Security Council and better action in the field so that justice and rule of law components become integral parts of United Nations peace operations and missions.

The President: I now give the floor to the representative of Switzerland.

Mr. Helg (Switzerland) *(spoke in French)*: Peace does not last unless it is founded on justice and respect for the law. This idea is expressed in the Preamble to the United Nations Charter and is one of the foundations of the Organization.

Justice and respect for law must prevail first and foremost in relations between States. They must also constantly guide the action of the Security Council and the other bodies of the United Nations. Those two aspects are fundamental. However, our attention today is focused on a third aspect: the promotion of justice and the rule of law within societies that have been torn apart by war. I thank the United Kingdom for having taken the initiative to launch a process of reflection on the role of the United Nations in this area.

In his statement to the Security Council last week (*4833rd meeting*), the Secretary-General addressed the dilemmas which the simultaneous search for peace and justice can sometimes encounter. When the immediate objective is to stop a bloody civil war and to save the lives of innocent people, justice perhaps seems like a remote ideal. Sometimes, it is even perceived as an obstacle to peace. But peace does not just mean a halt to hostilities. It is lasting only if the society concerned finds a way leading to justice and reconciliation. In the long term, justice always acts in the service of peace. It is therefore important to prevent impunity. A peace agreement is not worthy of its name if it contains an amnesty for war crimes, genocide or other crimes against humanity.

In creating the two International Criminal Tribunals, the Security Council acknowledged the link between peace and international justice. The establishment of the International Criminal Court is a response to the same logic of complementarity between the pursuit of justice and the promotion of peace. While the International Criminal Court is independent from the United Nations, both institutions will benefit from a close and cooperative relationship.

The establishment of democratic institutions and the institution of the rule of law are equally essential to prevent conflicts or re-igniting hostilities. Special assistance must be given to the parliament, the courts, lawyers associations and the police. Elections often signal the end of international involvement, but in themselves they are not enough to guarantee the rule of law. More is required to ensure the submission of institutions to the law, the separation of powers and the free exercise of fundamental freedoms.

From El Salvador to East Timor and Kosovo, the United Nations has acquired solid experience in promoting justice and the rule of law. Henceforth it is important to integrate this dimension in United Nations peace operations more systematically. Every Security Council mandate concerning post-conflict situations should include provisions on promoting justice and the rule of law.

Justice — with its three pillars of the judiciary, the police and a correctional system — must be a constituent part of any peace and reconstruction process. In concrete terms, this means that as soon as a peacekeeping operation is being considered, the United Nations must start to plan its engagement and must be given the means to act rapidly and in coordination with the other potential players.

Switzerland welcomes the proposal of the Secretary-General to present a report on this subject. It invites him to highlight examples of good practice. In preparing that report it is desirable to undertake the broadest possible consultations within the United Nations system, but also among relevant institutional players and civil society.

International organizations such as the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and La Francophonie

have been involved in promoting democracy and the rule of law for many years. Their experiences should be better known within the United Nations to allow opportunities for strengthening institutional partnerships. Switzerland also invites the Secretary-General to address in his report the obstacles which prevent national authorities from prosecuting international crimes and to assess ways to overcome such obstacles.

I conclude by emphasizing that Switzerland is very interested in this initiative on the promotion of justice and the rule of law. It is very keen to contribute to the current reflection on ways to strengthen United Nations action and offers its assistance in those areas where it possesses relevant experience, such as constitutionalism and transitional justice.

The President: I now give the floor to the representative of Finland.

Ms. Rasi (Finland): Finland fully associates itself with the statement made by Italy on behalf of the European Union. We thank the United Kingdom presidency for introducing justice and the rule of the law to the Security Council agenda. Finland gives special importance to the issue and has been actively participating in the discussions on how to make it a more integral part of the work of the United Nations.

The importance of the rule of law has been early and widely accepted in Finland. Legal thinking is historically deep-rooted in Finnish society as a means to foster national autonomy. Finland's commitment to strengthening the rule of law within States and in international relations enjoys broad national support. Participation in international cooperation to promote peace and human rights has been inscribed in the Finnish Constitution.

Establishing functioning rule-of-law structures contributes to the rebuilding of conflict-torn societies. The central role of the rule of law in United Nations peacekeeping was recognized in the Brahimi report. Launching the Task Force of the Executive Committee on Peace and Security was an important step forward. Its final report introduced practical recommendations on how to further improve the ability of the United Nations to respond to the challenges of multidimensional peacekeeping in the post-conflict phase. Those recommendations must be effectively implemented.

Rule-of-law aspects should be mainstreamed into the work of the United Nations. That presupposes enhancing the capacity of the Secretariat. At the moment, there is one judicial and one corrections staff member in the Criminal Law and Judicial Advisory Unit of the Department of Peacekeeping Operations (DPKO), although the Secretary-General has recommended a more substantial number of posts. The focal-point network consisting of representatives of other United Nations and related departments provides important information and support, but it is not in a position to carry out the substantive day-to-day work of the Unit. Increasing the capacity of the Criminal Law and Judicial Advisory Unit in conformity with the recommendations of the Brahimi Panel would enable it to meet the needs of the DPKO and of peacekeeping operations. However, the success of the rule-of-law strategy requires a coordinated approach by all United Nations agencies. No single unit has the experience, expertise, resources and mandate to secure the successful implementation of the principles of the rule of law in the peace-building process.

Rule-of-law aspects should be included in the mandates of current and future multidimensional peacekeeping operations. Rule-of-law experts should participate actively in planning new operations, as happened in the lead-up to the newly established United Nations Mission in Liberia. A comprehensive approach should be taken in which not only police but also judicial and corrections aspects are included in plans when appropriate. When the mandate of an existing operation is reviewed, a multidisciplinary internal United Nations working group should be formed to analyse whether rule-of-law aspects have been effectively addressed in the existing mandate. If that is not the case, steps should be taken to improve the situation.

For successful implementation, necessary funding needs to be secured. As compared to military and policing costs, considerable improvements can be achieved in judicial and corrections institutions with minimal resources. The failure to provide them with the necessary resources can, however, significantly reduce the effectiveness of the funding spent on the military and police aspects.

It must also be remembered that any improvements made will remain superficial unless they enjoy the support of local populations. Multidimensional peace operations should place

special emphasis on strengthening national rule-of-law institutions. After all, they will be responsible for upholding and implementing the principles of the rule of law after an international presence comes to an end. The relationship between the United Nations and local institutions must be based on partnership. In non-executive missions mentoring, training and monitoring could enhance the capacities of national institutions.

National reconciliation is crucial in countries emerging from conflict. Dealing with past crimes becomes a core issue in the process of establishing trust in the judicial system. In that connection, Finland gives its full support to the functioning of the International Criminal Court and ad-hoc tribunals. Finland believes that there should be no impunity for serious crimes such as genocide and crimes against humanity.

Finally, Finland hopes that the two Security Council meetings that have been held on the subject of justice and the rule of law will mark the beginning of a process that makes the issue an established part of the work of the Council and of the wider United Nations system. We appreciate the proposals made by Secretary-General Kofi Annan at the ministerial-level meeting of the Council that took place on 24 September, and we look forward to the report that is being prepared. Finland would like to reaffirm its commitment to the process of taking the rule of law further in the United Nations. Finland is dedicated to continue its efforts to that end.

The President: I now give the floor to the representative of Canada.

Mr. Heinbecker (Canada) (*spoke in French*): I would like to thank you, Mr. President, for having organized this debate and for giving us the opportunity to take up an issue that is both vast and important.

As is obvious from the statements that have previously been made, the international community has already accomplished a great deal with regard to justice and the rule of law. We would like for the United Nations, and especially the Security Council, to continue to take an active interest in these questions, and especially in the protection of civilians in armed conflict and the role of women in peace and security. As our colleague from New Zealand and others have indicated, justice and the rule of law are integral parts of the reconstruction of a country during the post-conflict period.

(*spoke in English*)

In the light of the time pressures that face us, however, I will focus my comments on two issues of particular concern to the Government of Canada.

The Council has shown commendable leadership in creating the ad hoc Tribunals for the former Yugoslavia and Rwanda. Those Tribunals, with their successes and their ongoing challenges, have both brought perpetrators to justice and strengthened international resolve to end impunity. The Tribunals are welcome advances on the status quo ante. But experience has revealed the problems inherent in an ad hoc approach, including uncertainty, selectivity, delay, duplication and cost.

A standing institution such as the International Criminal Court (ICC) can be both more efficient and more effective in deterring and prosecuting mass crimes. Of course, national investigations and prosecutions are the preferred course of action. We believe that the ICC will promote national action through the principle of complementarity. States will know that, if they do not act, the ICC will act; and they will also know, conversely, that if they do act, the ICC will not act. Certain States that may be unwilling or unable to act will also know that the ICC stands ready to help with extensive checks and balances to prevent abuse.

We are aware of the very strong concerns in some quarters about the theoretical possibility of the ICC's investigation of nationals of certain non-State parties. We do not think those concerns are warranted, but I would like to set aside those differences for a moment to focus on an area where I presume we all do agree.

In cases where the jurisdiction of the ICC is clearly accepted by the State affected, and where that State is unwilling or unable to respond to massive crimes, we assume that the Security Council will support the ICC in bringing justice for victims. The situation in Ituri, the Democratic Republic of Congo, may be one such situation.

Secondly, we are worried about the Special Court for Sierra Leone. The Council will recall that the Court is a hybrid United Nations-Sierra Leone tribunal and that it is financed entirely by voluntary funding. Despite the Court's successes over the past year, its future is threatened by a severe budgetary shortfall. The Court will be simply unable to complete its task

without receiving additional funds in the very near future. Some States have pledged resources, and their money is of course welcomed; but much more is in fact needed. We therefore appeal to the international community to contribute additional funds to the Special Court without delay.

The President: I now give the floor to the representative of Jordan.

Mr. Al-Hussein (Jordan) (*spoke in Arabic*): I thank you, Sir, for convening this important meeting and for the work you have done throughout your presidency of the Council.

(spoke in English)

We welcome most warmly the presidency's decision to choose for this year's ministerial debate the topic: "Justice and the Rule of Law: the United Nations role".

I will, with your indulgence, first make some comments the on rule of law as it relates to United Nations transitional administrations and then deal with justice, in terms of actions undertaken by the United Nations to address those individuals who commit the gravest of crimes.

This debate comes 11 years after the United Nations Transitional Authority in Cambodia (UNTAC) relaunched the United Nations back into complex peacekeeping, following a 28-year hiatus separating UNTAC from what is arguably the most complex operation ever undertaken by the Organization — the United Nations Operation in the Congo, which ran from 1960 to 1964. And, as we survey the last 11 years of United Nations experience with complex peacekeeping, it is noticeable how we, the international community, failed early on in the 1990s to draw on the lessons of those pioneering early days decades ago in the Congo and how, in many instances, we chose to operate not just from a clean slate, but also on the basis of trial and error — with the rule of law being the prime example of this.

Only after the United Nations had already established its complex operations in the Balkans and East Timor, for example, were we forced to confront, by force of circumstance, the penalty of not having positioned the rule of law high enough on the ladder of immediate priorities. This ensured that each transitional administration undertaken by the United Nations during that period ran close to having both itself and the purposes for which it was there undermined by well-organized criminal activity of the sort which would exploit, with blistering efficiency, the absence of the rule of law through the well-recognized industries of war profiteering, black marketeering, money-laundering, as well as arms- and drug-trafficking.

It was the report submitted by the Panel on United Nations Peace Operations, led by Lakhdar Brahimi, in August 2000 that first alerted us to this problem, relating to the absence of applicable law whenever a transitional administration is set up. Unfortunately, the proposal offered — of examining the possibilities for having an interim or model criminal code — ran into difficulties in the General Assembly, not because there was insufficient appreciation by Member States over the need for it, but because there were doubts as to whether an unreformed Security Council should be enabled, through the availability of a model criminal code, to impose a penal law when only the permanent members of the Council are in a position to chaperone this process over the longer term. In other words, the difficulties then encountered were essentially doctrinal and, while there was little doubt that the Security Council has an essential role to play on the rule of law, the question remains of whether it should have the only or exclusive right to it.

The discussions held within the General Assembly over the last two and a half years on the rule of law led to the creation by the Secretariat of the Criminal Law and Judiciary Advisory Unit, a small unit within the Civilian Police Division in the Department of Peacekeeping Operations. However, as was mentioned by the Secretary-General in his intervention in this Chamber a week ago, the Secretariat also established, in April 2002, a Task Force for the Development of Comprehensive Rule of Law Strategies for Peace Operations under the aegis of the Executive Committee on Peace and Security, which produced an excellent and comprehensive report on the rule of law, circulated to all Member States on 25 November 2002. This report offered numerous recommendations and highlighted those areas where Member States could be of some assistance to the Secretariat.

In his introduction of that report to the Special Committee on Peacekeeping Operations, the Secretary-General noted specifically that:

> "the Task Force ... emphasized the need for the United Nations to consult much more closely with local actors in the country concerned and engage them in a meaningful way in devising and undertaking rule of law initiatives in peace operations, so as not to impose a rule of law strategy on them." (*A/57/711, para. 28*)

It was language and a perspective that eased markedly the concerns of several delegations, and the Task Force's comprehensive report was subsequently both welcomed by the Special Committee on Peacekeeping Operations and then discussed at length in a special session called for by the General Assembly, arranged by the Secretariat and then held only a few months ago.

Our debate in the Security Council last week and today is therefore all the more timely and, naturally, we are in your debt, Mr. President, for that. What is now required, we believe, is for the Security Council to take stock of the current dialogue between the Secretariat and the General Assembly, and then work closely with the General Assembly so that whatever future decisions the Council may seek to take on the matter, should they require commensurate resources at United Nations Headquarters those resources will be there.

Ultimately, we feel that not only should the Criminal Law and Judiciary Advisory Unit, which presently comprises only two very able staff members, be expanded, but that, eventually, the United Nations police function at Headquarters should itself be a part of a justice and rule of law division, and not vice versa, as happens to be the case now. Discussions, I am sure, will continue on these and other points within the relevant committees of the General Assembly in the near future.

Finally, turning to the prosecution of those accused of having committed the gravest of crimes, my delegation believes firmly that, with the establishment of the International Criminal Court, the Security Council is well positioned to make use of Article 13 (b) of the Rome Statute and refer relevant situations to the Court. Not only are there strong legal arguments to be made in favour of such action by the Security Council — tied to the unique legitimacy brought on by the Court's international and permanent character, together with the Court's early deference to national jurisdictions — but also there are very practical considerations which must be brought into the Council's calculations. Simply put, there is a limit to the number of legal specialists worldwide who are qualified, able and willing to staff and then render operational alternatives to the International Criminal Court, such ad hoc, special or hybrid courts. And, as the President of the Council noted last week, funding these ad hoc arrangements can also be a serious problem.

We stand convinced that the International Criminal Court will, over time, play a central role in how the Security Council chooses to confront those who commit the gravest of crimes in societies afflicted by war, and are pleased to note that most Council members appear to share that opinion.

The President: I now give the floor to representative of San Marino.

Mr. Balestra (San Marino): I would like to commend the members of the Security Council and you in particular, Sir, for having taken up the issue of justice and the rule of law — a subject that, in our opinion, is extremely important and yet sometimes forgotten in this era when the attention of this body has been drawn by other more urgent matters.

For my delegation, this is indeed an historic occasion, since this is the first time the Republic of San Marino is addressing the Security Council. In this regard, nothing honours me more than to address this body on such an important issue as the principles that should guide the United Nations in promoting justice and the rule of law in the reconstruction of societies and peoples affected by internal or international crises.

Students of post-war history in our contemporary age have observed that, among other things, justice and the rule of law have regrettably not always commanded mankind's attention in the formulation of national and foreign policies. Every human institution is understandably imperfect, but the miracle of civilization is such that people consistently strive to correct those imperfections. Today's proceedings before this Council are testament to that.

Justice and the rule of law are concepts universally shared, yet uniquely defined along standards that are relevant to our own individual statehood experiences. People define justice and the rule of law by how they are served and protected by these principles. Their definitions are created by their own experience of freedom and statehood, the codification of domestic laws that ultimately define a

judiciary, and a constitution that protects their welfare and interests. The history of San Marino, for example, shows that our people have had 17 uninterrupted centuries of experience in defining their own concepts of independence, justice and law, such that we have now a greater appreciation for and empathy with the purposes and principles of the United Nations Charter and the community of Member States. Our presence in this Council today bears witness to this.

Concepts of justice and the role of law are studiously researched, commented upon and drafted by international legal and historical academic scholars. Despite the diversity of legal theory, one theme remains: in order for civilization to live in peace, there has to be mutual respect for the order of law and the promulgation of justice. Laws must be drafted and executed in order to promote the gradual evolution of the protection of peoples in their daily lives, no matter what the economic and social challenges may be at any given point.

Academics have for decades studied the role of the United Nations in the execution of the rules of justice and law as it carries out its duties and responsibilities. Yet, as the Secretary-General rightly pointed out in the Council on 24 September, given the current challenges that confront the Organization, this task has become more complicated and complex — above and beyond any given legal theory. But as history has shown, the United Nations has in fact been successful in its earnest endeavour to set forth concepts of justice and the rule of law.

One need only consider its many activities. In the political, social and humanitarian fields, the United Nations has striven for such a definition of justice, whether it has to do with improving the social and economic lives of millions through cooperation, food programmes or financial assistance, or with sending civil and military personnel as peacekeeping operatives for the purpose of preserving life and security in troubled lands. Important legal institutions have been established, such as the International Criminal Court, which my Government strongly supports. We were the first European country to ratify the Rome Statute of the Court, which was created to fight impunity and to ensure peace, security and the rule of law through the realization of justice.

Some of these initiatives, of course, run the risk of criticism, and there are understandable fears, such as that of politicization. But the historical lessons concerning the creation of the International Court of Justice and other international criminal courts and tribunals show that those fears are inevitably transformed into a broader and more universal relationship of cooperation that can only have a more positive effect.

While justice and the rule of law must be the inspiration for and the leading principles behind the building of societies and nations, we should not forget the words of warning of the Secretary-General, who, addressing the Council last week, said, "the relentless pursuit of justice may sometimes be an obstacle to peace." (*S/PV.4833, p. 3*)

In seeking the realization of justice and the prevalence of the rule of law, one should not forget the need to promote national reconciliation and institutional stability. Sometimes it is difficult to attain all those goals simultaneously, and Governments and international organizations must act and make their choices very carefully.

The people of San Marino proudly associate themselves with the work of the United Nations and its aspirations to fully ensure justice and the rule of law throughout the world. We offer our support for those initiatives, with the primary goal being the betterment of mankind through the universal application of the concepts of justice and the rule of law. Once that application is achieved, then — and only then — can we truly say that we have fulfilled the historical promises set forth by the founders of this Organization.

The President: I thank the representative of San Marino, and note the historic nature of his statement, which was the first to be made to the Security Council by his delegation. I am glad that he chose to speak on justice and the rule of law, and I am sure I speak for the whole Council in hoping that it will not be too long before his delegation addresses the Council again.

I now give the floor to the representative of Sweden.

Ms. Fogh (Sweden): Sweden fully aligns itself with the statement made earlier by Italy on behalf of the European Union.

Let me first of all thank you, Mr. President, and the United Kingdom for bringing matters of justice and the rule of law to the fore. The principle of the rule of law is at the very heart of the United Nations, whose

Charter preamble specifically mentions justice and respect for the obligations arising from treaties and other sources of international law. All Members of the United Nations have an obligation to respect and ensure respect for the rule of law in international relations.

While the need to address rule-of-law issues in the aftermath of conflict is commonly accepted, it is a special challenge to identify and address causes of conflict at an early stage. Deficiencies in the rule of law inhibit efforts to prevent armed conflict. Among the common root causes of conflict are the lack of independent judiciaries; illegal activities by and lack of civilian control of armed and security forces; corruption; organized crime; and impunity. Increased attention must be given in time to these threats to peace.

Full use should be made of information and analyses on such issues from the United Nations human rights mechanisms and bodies. This information should be brought to the attention of the Council and lead to concerted action to remedy such threats to human rights and peace. Such action must be coordinated among United Nations agencies, Member States and other relevant actors.

The late High Commissioner for Human Rights understood those links well. When Mr. Vieira de Mello pledged, in the Third Committee last fall, to make the principle of the rule of law the centrepiece of his approach as High Commissioner, he said:

> "A comprehensive strategy to establish global security must be grounded in promoting respect for human rights through upholding the primacy of the rule of law, fostering social justice and enhancing democracy".

Mr. Vieira de Mello went on to underline that efforts to counter terrorism must enhance, rather than undercut, the rule of law. He also urged us to resolve to commit in a more serious way to prevention, rather than picking up the pieces afterwards.

In the context of conflict prevention, we welcome the increased use by States of the International Court of Justice, which is the principal judicial organ of the United Nations and a central institution in solving inter-State conflicts at an early stage.

As already mentioned by Italy, on behalf of the European Union, international courts and tribunals have an important role to play in ensuring the rule of law at the international level. The newly established permanent International Criminal Court has endowed the international community with an optimal tool for combating impunity, even when States fail to act domestically. The Security Council can have an important part to play in triggering the jurisdiction of the Court by referring situations to it under article 13 of the Rome Statute. Sweden believes that, as evidence of the universal norms underpinning the very essence of the rule of law, there should be no obstacle for the Rome Statute's eventually achieving universal application.

I would also like to stress the importance of the work carried out in the justice and rule-of-law area by a wide variety of non-State actors, such as non-governmental organizations. They should receive our full support, both in terms of finance and of know-how.

The rule of law must be distinguished from rule by law. Institution-building and the legal infrastructure are important, but not enough by themselves. The legal system must be just and must be perceived as just by the population. The legal system must build upon international human rights norms and standards. Law enforcement agencies, judges and lawyers must be trained to understand and apply human rights. Corruption and impunity must be fought. This applies not only in post-conflict situations. By upholding just legal systems that enjoy the trust of the population, we can also eliminate many causes of conflict in our societies. Justice, the rule of law and human rights go hand in hand in peaceful societies.

The President: I now give the floor to the representative of the Philippines.

Mr. Baja (Philippines): I would like to congratulate the presidency of the United Kingdom for bringing to the forefront of the agenda of the Security Council the important issue of the rule of law in the maintenance of international peace and security. This issue represents one of the most important spokes in the hub of the overall responsibilities of the Council under the Charter.

In her speech last Friday to the General Assembly, Her Excellency President Gloria Macapagal-Arroyo mentioned the promotion of the rule of law as one of the main priorities of the Philippines at the United Nations. She emphasized that international security must be underpinned by a strong commitment

to the rule of law, where individuals and communities are protected from violence and impunity is curtailed through the enforcement of international human rights and humanitarian norms.

Establishing the rule of law, especially in post-conflict societies, is indispensable if the United Nations is to help establish sustainable and responsible governance in these areas. Erecting machineries and infrastructure for the rule of law should be included as a key part of any exit strategy of United Nations peace operations. In fact, it should be a core function of all United Nations peace operations. It is my delegation's view that the Security Council should provide the necessary leadership in moving the United Nations to a stronger commitment to the rule of law in areas where the United Nations is engaged in peace operations. The rule of law is the key link that connects post-conflict societies to their full restoration.

The rule of law does not, however, operate in a vacuum. Conditions must be set to allow it to take root and flourish in post-conflict societies. No matter how important institutions, machineries and written laws are, on their own they cannot guarantee the attainment of justice or the rule of law. They remain empty shells if they are not imbued with energy to actually serve justice.

Thus, it is crucial that various pitfalls be avoided to ensure that those who are most in need of the benefits of the rule of law — communities in post-conflict societies — actually attain them.

First, it is important that local actors and resources are employed in establishing the foundations of the rule of law in a post-conflict context. The local population should have a stake in the process so that they can own up to the responsibility of charting their community's destiny. They should be provided all the necessary assistance to succeed, but they must be the ones ultimately responsible for their future.

Secondly, the power relationships in post-conflict societies must be given serious consideration in the United Nations efforts to provide a solid foundation for the rule of law. While power, both political and economic, is unavoidably unequal most of the time, over-domination by a single interest in a society would be detrimental to the rule of law. It is, therefore, important that establishing a comprehensive rule of law must include paying attention to social, economic and political reforms of post-conflict societies.

We are at an important crossroads in our effort to find a lasting solution to the conflicts that continue to plague our world today. Our experience over the last decade has shown that focusing merely on resolving and preventing conflicts without concomitant attention to strengthening the instruments and foundations of the rule of law in post-conflict societies is at best a half-baked effort.

We are fortunate that the United Nations has deep expertise and resources in this field, as reported last year by the Secretary-General's Task Force on the Rule of Law in Peace Operations. It is now imperative that the Security Council harness those resources and expertise to help institute the effective rule of law in societies that the international community is helping to attain stability and progress.

The President: I now call on the representative of Australia.

Mr. Dauth (Australia): We very much welcome the focus on the theme of justice and the rule of law. Such issues are central to the Council's work on peace and security.

Our long experience in peace operations has made us acutely aware of the importance of justice and rule-of-law issues to societies in conflict, or emerging from it. This was particularly the case in East Timor, where the United Nations Transitional Administration in East Timor (UNTAET), as the administering authority, was tasked with establishing the foundations for a new State. Central to this was the establishment of an effective system of justice and the rule of law. There are a number of lessons that can now be drawn from this recent and, on the whole, successful experience.

First, justice and rule-of-law considerations must be treated as core components of United Nations missions. Rule-of-law strategies must be implemented as soon as possible. The United Nations must remain engaged throughout the continuum of peace operations, from conflict prevention to peace-building. Appropriate experts must be deployed quickly. International actors must work with local actors, and leave behind strong local institutions and capacity.

Much has been achieved in East Timor. But, as the mandate of the United Nations Mission of Support in East Timor (UNMISET) comes to an end, work to consolidate the rule of law is still required there and

will need to be incorporated into a post-UNMISET United Nations presence.

Earlier this year, the situation in the Solomon Islands deteriorated markedly, and the rule of law virtually collapsed. In July, at the request of the Solomon Islands Government, and with the unanimous support of all Pacific Islands Forum members, Australia led the Regional Assistance Mission to the Solomon Islands, a regional arrangement under Chapter VIII of the Charter. The Mission is intended to re-establish conditions in which justice and the rule of law can operate. Police from across the region are now working alongside Solomon Islands police, with the support of military personnel. The Mission is restoring hope. The Council could learn much from this experience.

Significant progress has been made towards incorporating considerations of justice and the rule of law into peace operations. The report of the Task Force of the Executive Committee on Peace and Security on the rule of law in peace operations provides a valuable guide to current work and future directions. We also commend to the Council the outcomes of a conference on the rule of law in peace operations, which we hosted last year.

In some cases, international assistance to domestic legal systems is required to ensure justice. In this context, Australia calls upon Cambodia, with the assistance of the United Nations and a number of States, including Australia, to quickly establish Extraordinary Chambers to try senior Khmer Rouge leaders. This will enable justice within Cambodia, which, as I am sure the Council knows, is long overdue.

Finally, Australia would welcome a report from the Secretary-General on justice and rule-of-law issues. This should pull together past experience, draw on work already done, set out lessons learned and provide focused guidelines for future consideration of justice and rule-of-law issues. It will be a valuable tool to assist our collective efforts.

The President: I now give the floor to the representative of Sierra Leone.

Mr. Kanu (Sierra Leone): I thank the United Kingdom, President of the Security Council, for organizing this timely meeting. The Sierra Leone delegation also thanks the Secretary-General and the Office of Legal Affairs for their contributions to the promotion of the rule of law in international relations.

The Security Council is the principal organ for the maintenance of international peace and security and this role is intrinsically linked to the promotion of justice and the rule of law. This delegation also believes that justice and the rule of law are essential elements for building peace and democracy. In this effort, the United Nations, and, in particular the Security Council, must be consistent and firm in its application of international instruments relating to the observance, promotion and protection of human rights and international humanitarian law.

Our continent of Africa, in particular our subregion of West Africa, has suffered unimaginable wrongs, not only in terms of the loss of human life but also in the erosion of the rule of law. My delegation believes that the absence of the rule of law creates an atmosphere in which gross violations of human rights and international humanitarian law are often accepted and encouraged with impunity.

We in developing countries need the rule of law in order to live in a peaceful and just society. But durable and sustainable peace is something we cannot achieve without the help and assistance of developed countries, which need to show more leadership in the respect of the rule of law, both nationally and internationally. An effective rule of law is the sine qua non for justice and therefore, for accountability. However, establishing and promoting justice and the rule of law require resources, for justice and the rule of law are not cheap. They are expensive to attain.

In this regard, let me digress and make a plea for the Special Court for Sierra Leone. The Court needs resources and we call on all States to contribute to the Special Court for Sierra Leone. The Court is an important mechanism for the restoration of peace and the rule of law in Sierra Leone.

For decades, the international community has been trying to set up a court that will bring justice to victims of heinous crimes and bring an end to the culture of impunity. The international community now has an International Criminal Court that is fully operational. There are now over ninety States that are parties to the Court's Statute. Sadly, despite this expression of determination by the international community to establish a just legal order, the Statute of the International Criminal Court (ICC) has not enjoyed

full universality. This delegation calls on all States, and these include our dear friends, members of the Security Council, who are not parties to the Statute to sign and ratify the Statute as a matter of urgency. This will demonstrate their commitment to the promotion of justice and the rule of law in international relations.

The Judges, the Prosecutor, his deputy and the Registrar of the Court have all been elected. Those eminent persons represent the collective wish of mankind to end impunity and foster the rule of law in international relations. This delegation does not believe that those individuals will engage in frivolous and vexatious prosecutions and thus betray the collective confidence entrusted to them by humankind. The International Criminal Court is the tool that can be instrumental not only in bringing to justice war criminals but also in disseminating the notion of individual criminal justice for egregious crimes.

The Court furthers the Security Council's goal of maintaining international peace and security. It is not a threat to the sovereignty of States. In this delegation's view, the principle of complementarity ensures the sanctity of the sovereignty of States. It is only when States are unwilling or unable to investigate and prosecute that the ICC will intervene.

Sierra Leone believes that accountability, reconciliation and reintegration can be achieved through the rule of law. The rule of law is the only way to move forward and rebuild a thriving and peaceful democratic society. Accounting for our past and attributing individual criminal liability to those most responsible for violations of human rights and international humanitarian law are sure ways for the United Nations to foster justice and the rule of law, as the United Nations is an instrument of justice and the rule of law.

In conclusion, let me remind this body of what the Secretary-General of the United Nations, His Excellency Mr. Kofi Annan said in September last year before the first session of the Assembly of States Parties to the International Criminal Court. He said inter alia that the International Criminal Court "must serve as a bastion against tyranny and lawlessness, and as a building block in the global architecture of collective security." The Sierra Leone delegation subscribes to that view.

The President: I now call on the representative of Uruguay.

Mr. Paolillo (*spoke in Spanish*): Last week, when the debate on the role of the United Nations in promoting justice and the rule of law began in this Council, the Secretary-General underscored what, in the view of Uruguay, is the most serious and sensitive problem raised by this issue.

I refer to the conflict — which frequently arises in the process of restoring democracy — between the need to ensure the rule of law and justice on the one hand and the need to return to institutional normalcy and achieve national reconciliation on the other. As the Secretary-General stated, "At times, the goals of justice and reconciliation compete with each other" (*S/PV.4833, p. 3*).

Uruguay has some experience in this matter. After an interlude in the 70's that interrupted for eleven years the process of democratic development that had for 100 years characterized the history of the country, Uruguay returned to the path of democracy. The new Government led the nation down the difficult path of transitioning from repression and authoritarianism to democracy and freedom.

This path was difficult because the democratic Government was not only required to heal the wounds that society had sustained during the de facto regime but was also required to respond to the need for institutional stability and to establish the conditions necessary for the full enjoyment of freedoms within the rule of law.

The crimes and violations of human rights committed before and during the de facto Government's rule had to be punished. This was an elementary demand of justice.

However, the country found itself in special political circumstances that placed the democratic Government in a difficult political and moral dilemma: the Government could either seek to ensure justice — and thus frustrate or at least delay the objective of ensuring the democratic continuity, social peace and national reconciliation sought by all Uruguayans — or it could give priority to the latter objectives at the cost of sacrificing the former.

The democratic Government, exercising the authority conferred upon it by the Constitution, chose the second option, enacting laws that granted amnesty for all political crimes as well as for all related common and military crimes committed both by

military and police officials of the de facto Government and by members of opposition groups. This was a painful but unavoidable decision for Uruguay, a country that aspires to see an end to impunity and that is a party to the statute of Rome and firmly supports the International Criminal Court.

Two things should be mentioned here. First, the Uruguayan people ratified the law on amnesty for military and police personnel through a popular referendum. Secondly, a reconciliation commission comprised of representatives of all political sectors was established in Uruguay, which, over the past several years, has examined the cases of persons who had disappeared and succeeded in resolving many of them.

Certain sectors of public opinion and some intergovernmental organizations disapprove of amnesties and governmental acts of clemency and argue that these actions are incompatible with the obligations arising from international instruments that promote respect for human rights.

At a theoretical level, it is very easy to respond to this dilemma with statements in favour of the establishment of justice, which is a supreme and universal value shared by all. In the real world, the response is neither as easy nor as obvious. As the Secretary-General said, "the relentless pursuit of justice may sometimes be an obstacle to peace. If we insist, at all times and in all places, on punishing those who are guilty of extreme violations of human rights, it may be difficult or even impossible to stop the bloodshed and save innocent civilians. If we always and everywhere insist on uncompromising standards of justice, a delicate peace may not survive." *(S/PV.4833)*

I wish to note that the international community has recognized to a certain degree the need to defer the demand for justice under exceptional circumstances to ensure the maintenance of peace. I am referring to article 16 of the Statute of the International Criminal Court, which authorizes the Security Council to request that the Court suspend investigations or prosecutions that have been initiated — and it bears repeating, those that have been initiated. The request must be made in accordance with a resolution adopted under Chapter VII of the Charter, which means that the Council may use that authority when it considers that moving forward with proceedings already initiated before the Court could interfere with the Council's mission to maintain international peace and security.

Article 16 of the Rome Statute thus constitutes a clear recognition that justice and the maintenance of international peace and security can sometimes be incompatible goals. To be more precise, resolutions 1422 (2002) and 1487 (2003) are not, in our view, correct applications of article 16 of the Rome Statute.

I would like to thank the Security Council for the opportunity to voice the views of my Government on this very important item. I also wish to express our hope that international organizations, Governments, non-governmental organizations and, in general, all those who are involved in some way in the quest for justice and the rule of law shall consider the ideas and recommendations contained in the excellent report of the Secretary-General on this subject, which touched on the need to proceed with caution and seek balance to ensure respect for the various competing values at stake.

The President: I now call on the representative of the Democratic Republic of the Congo.

Mr. Ileka (Democratic Republic of the Congo) (*spoke in French*): At the outset, I would like to express our gratitude for your welcome initiative to hold today's Security Council meeting on justice and the rule of law and to take this opportunity to thank Mr. Guehenno for his introductory briefing on the item under consideration.

Concerning the particular situation in my country, I would just like to say that a new era of peace and reconciliation, national unity and the restoration of State authority, reconstruction, economic recovery and development has begun in the Democratic Republic of the Congo.

As was recognized by our head of State, His Excellency Major-General Joseph Kabila, in his statement last week before the General Assembly at its fifty-eighth session, "In the peace process now under way, an area of critical importance and an imperative is that of independent justice, whose equitable administration would mark the end of impunity." This shows that the national Transitional Government is aware of the responsibility incumbent on it to establish and maintain a fair, reliable, ethical and efficient system of justice in accordance with the principles of the Charter and international law.

The Government is not blind, however, to the challenges that we face to make that dream a reality.

This involves difficulties that new democracies often encounter in establishing new laws and infrastructure to meet the needs of justice and compliance with the rule of law in the face of rising crime, which often occurs during periods of transition. In that respect, the Democratic Republic of the Congo has been affected by specific problems, which have been worsened by war. The problems that make law enforcement more difficult include the lack of financial resources, the lack of an adequate court system and the need for deep change in behaviour and customs to be able to confront ever-increasing broad and complex challenges. We must add to this list the need to eradicate corruption and anti-democratic features within the justice system if we truly wish for one that enjoys the trust of the entire community and benefits from the community's support and respect for the rule of law. Law enforcement agencies and public administrative offices must also be accountable for their actions.

We should not lose sight of the importance of striking a balance between the need for an efficient system of justice and the protection of individual rights and the need to tackle the economic causes of crime and armed violence, including the illegal exploitation of natural resources and the major role of the fight against corruption.

Concerning the effects of war, in particular, it should be recalled that some 4 million Congolese have perished as a direct or indirect result of armed violence. After the war, it would be a mistake to believe that the Democratic Republic of the Congo can achieve peace and stability without attempts to shed light on the crimes that have been committed, to bring the perpetrators to justice and to do right by the victims.

To prevent such offences from going unpunished and recurring elsewhere, or in the Democratic Republic of the Congo itself in the future, my country has decided to appeal to the international community for the establishment of an international criminal court for the Democratic Republic of the Congo.

With respect to the most serious crimes committed after the entry into force of the Rome Statute, the International Criminal Court must assume its full responsibilities. The recent statement by the Prosecutor of the Court on his intention to initiate an inquiry in this respect should be encouraged.

It should be noted, however, that no State on its own can effectively address the many challenges that the restoration of a justice system and compliance with the rule of law entail in societies undergoing transitions, given the complexity of those challenges. The question is rather one of the shared responsibility of States and the international community. Here, the role of the United Nations must come to the fore, particularly through its machinery for cooperation, which my delegation considers a critical factor to ensure that the rule of law becomes a universal reality.

For many developing countries and transition countries, in particular, technical assistance is crucial for implementing the rule of law and strengthening the system of justice. Such assistance can often benefit recipient as well as donor countries.

The United Nations must take a pragmatic approach by establishing, for example, a special trust fund to meet the particular assistance needs of developing countries and making clear that technical assistance, training, exchange of information and expertise in matters of justice and enforcement of the rule of law, as well as financial assistance, will always be needed to strengthen democratic institutions, the effective implementation of the rule of law and community involvement in crime prevention. Such assistance will also be needed to establish programmes that deal with the scope of the justice system as a whole or specific aspects of criminal justice.

My Government would like to thank the Secretary-General for the assistance that he has provided to the independent electoral commission of my country. We have also noted the Secretariat's readiness to assist other institutions in our Republic in support of democracy, including a human rights observer mission and a truth and reconciliation commission. That commission must investigate all cases of human rights violations committed during the war. This will also be an appropriate venue for humility, contrition and forgiveness. I firmly believe that the Congolese people will show forgiveness.

But there are cases, as with military officers whose names are listed in the report of the High Commissioner for Human Rights (S/2002/764), for which no concession should be made. In particular, I have in mind General Laurent Mihigo Nkunda, the former commander-in-chief of the Seventh Military Brigade, a former unit of the Rassemblement congolais

pour la démocratie-Goma (RCD-Goma), who, sadly, gained personal notoriety in the massacres that took place in Kisangani in May 2002.

I encourage all international and national non-governmental organizations, witnesses of the massacres in Kisangani, the families of the victims of that city and families of the soldiers of the former unit of the RCD-Goma, who were summarily executed in 2002, to prepare their cases to claim damages at the appropriate time. The Congolese people and the neighbouring countries are asked to provide their full cooperation so that Mr. Laurent Mihigo Nkunda can be arrested and immediately brought before the Congolese justice system.

To sum up, in order to ensure lasting security — a prerequisite for respect of the rule of law — my country calls for the establishment of active cooperation through exchanges of information, experience and knowledge, and for the provision of technical assistance in the area of justice and respect of the rule of law.

We call also for the elaboration of measures that will help to strike an appropriate balance between suppression and prevention while at the same time safeguarding human rights; and, finally, for the establishment, with respect to the rule of law in the Democratic Republic of the Congo, of an international criminal court that can prosecute and punish the perpetrators of the many massacres and other massive human rights violations committed on the territory of the Democratic Republic of the Congo.

The Democratic Republic of the Congo awaits prompt and responsible action on the part of the Security Council, which must not shirk its responsibilities.

The President: I now call on the representative of Argentina.

Mr. Cappagli (Argentina) (*spoke in Spanish*): Mr. President, I should like at the outset to congratulate you and sincerely to thank you for having convened this debate.

The rule of law is a system in which the law provides a standard common to all individuals. The rule of law and justice legitimize the actions of Governments, securing dignity, security and prosperity for all citizens, without any distinction.

In the past decade a very significant change has taken place in the way of thinking of the international community. The Security Council today is clearly aware that, in a society without guarantees of the rule of law, peace will prove ephemeral or difficult to achieve. If, moreover, in such a society there arises a conflict, the matter may go to the agenda of the Council. That trend may be seen, for instance, in the classical concept of peacekeeping operation applied during the cold war, which today has undergone a far-reaching change.

Unlike their traditional role of monitoring observance of ceasefire lines, peacekeeping operations today have become missions with multidimensional capacities and mandates involving a growing complex of elements and actors — State actors, international and private actors, all pursuing the ultimate goal of ensuring the construction of a lasting peace in societies emerging from conflicts.

In this new kind of peacekeeping operation, we can clearly see the fundamental role that is being played by the rule of law, reparations for injustices and the creation of police, legal and judicial structures aimed at building a society in which the rule of law can prevail.

It is clear today that, for a society emerging from conflict, the long-term viability of peace and democracy very often, if not always, implies the reign of justice. A society that has not, in some effective and generally accepted way, overcome the injustices besetting it, although it may enjoy social peace and security, will not truly recover.

Justice and its opposite, impunity, have decisive relevance in the pacification of societies torn by conflicts. Impunity, unfortunately, was very common in the latter half of the twentieth century, and undoubtedly that situation encouraged perpetrators to continue with their crimes.

In the early 1990s, the Security Council, after decades of inaction, brought about a significant change. Resorting to a more creative interpretation of its powers under Article 39 of the Charter, the Council decided to create special jurisdictions designed to try the major perpetrators of the most heinous crimes. It thus established the international tribunals for Rwanda and Yugoslavia, the Special Court for Sierra Leone and various other jurisdictional mechanisms designed to respond to situations in Kosovo, Timor or Afghanistan.

In adopting these types of measures, the Council finally addressed head-on the most complex issue in the pursuit of justice and the rule of law in all societies, namely, definitively overcoming injustice. The subsequent actions taken by the jurisdictions created by the Council showed that this step, despite all the attendant difficulties, proved to be a substantial step towards a return to peace.

Despite the redress provided by these new jurisdictional mechanisms, they applied only limited, special and provisional solutions to specific cases, generally superimposed on the local justice system and, moreover, subsequent to the crimes.

The fight against impunity required a universal jurisdictional mechanism, one that existed prior to the commission of the crime and one that was permanent. For those reasons, the international community decided to create the International Criminal Court, a decisive tool for the rule of law and the safeguarding of fundamental human rights.

That Court is complementary to national sovereignties. It is not in competition with them. It is based on the consent of the State, freely given upon ratifying the Rome Statute. Before zealously undertaking its own prosecutions, it endeavours to see States set in motion their own courts in the full exercise of their sovereignty and combat impunity through their own systems of justice. Thus it ensures that local authorities applying accepted principles of justice are universalizing the effective application of the rule of law.

The Criminal Court thus constitutes the embodiment of the historic aspiration for justice on the part of all the peoples that make up the United Nations. For that reason, we must continue to insist that the profound meaning of this institution be understood, which will revitalize the international legal edifice, ensuring that the application of the law around the world is not thwarted.

In the operational sphere, the Security Council should ensure that its mandates adequately take into account the justice and rule of law component. It should do so by adapting to the requirements imposed by the society that needs assistance, and the Council's action should seek to restore to that society the capacity to be the master of its own fate — not to impose imported solutions.

To that end, the Council, before adopting any mandate, must have a sufficient understanding of the characteristics and needs of that society, evaluating them with care. Prior evaluation, then, is very important.

In the context of the mandates, we should seek to revitalize, insofar as it is acceptable, local mechanisms and solutions. We should seek to help wounded societies to restore justice by applying and improving their own legal systems. This may prove to be a more lasting solution than seeking to impose exogenous formulas. After all, what we are seeking is that, in such a society, a transition should take place towards governability based on the rule of law — its own law, the law that was violated. The certainty that such a society's own laws will be restored could contribute to restoring the dignity and honour of that community.

The training of local police is key. Society will trust their police only if citizens perceive them to be professionals that are independent in relation to political or other factions. Conscious of that reality, Argentina has assisted by sending hundreds of police instructors to participate in various peace missions.

Finally, imagination, flexibility and resources will always be indispensable. But perhaps the most important of all is for the Security Council, the Secretariat and all organs of the United Nations to institutionalize once and for all in their procedures, strategies and policies the elements that the United Kingdom has invited us to consider today. Justice and the rule of law are prerequisites for community Life. Peace is not possible without them.

The President: The next speaker inscribed on my list is the Minister for Foreign Affairs of the Republic of Trinidad and Tobago, His Excellency The Honourable Knowlson Gift. On behalf of the Council, I extend a warm welcome to the Minister and offer him the floor.

Mr. Gift (Trinidad and Tobago): I wish to thank the United Kingdom presidency of the Security Council for holding this open debate on an issue of such great relevance in current international relations. It is not surprising that this initiative comes from a country such as the United Kingdom, the source of one of the major legal systems of the world, founded on the principles of natural justice.

The United Nations was founded after the Second World War with the objective of saving succeeding generations from the scourge of war. However, that goal of peace for all mankind cannot be assured without strict observance by all members of the international community of the fundamental principles and purposes of the Charter upon which the Organization is based. Observance of the fundamental principles of international law enshrined in Article 2 of the Charter is essential for creating and maintaining a clearly defined and reliable international system to govern inter-State relations. Where that system is allowed to fragment, for example through the selective application of international law and justice or through the avoidance by States of their international responsibilities, such deterioration lays the groundwork for anarchy in international relations.

History has repeatedly shown that justice and peace are inextricably linked and that one cannot exist without the other, whether it be social justice, economic justice, the recognition of fundamental human rights and freedoms or respect for the rule of law. Accordingly, the United Nations has a key role to play in promoting the principles of international justice and the rule of law. While the Security Council is charged with the primary responsibility for the maintenance of international peace and security, ensuring justice and the rule of law is not the domain solely of this organ. Every part of the United Nations system has an important role to play in the quest for international peace and justice, which cannot be achieved in a vacuum and which cannot be imposed externally without the participation of local actors.

The work of the many organs and bodies of the United Nations system is intended to benefit the ordinary man in the street, to improve his conditions of life and to ensure a better world for him and future generations. The General Assembly, the Economic and Social Council, the Trusteeship Council, the Security Council, the Secretariat and the International Court of Justice in particular have all contributed significantly to those goals, according to their distinct spheres of influence, and, in doing so, have contributed to creating the conditions that will lead to peace and respect for the rule of law.

It is significant that the framers of the Charter could not conceive of a permanent international organization of States without a permanent judicial body to adjudicate the disputes that might arise between them. While the international community has focused much attention in recent times on the enforcement provisions of Chapter VII of the Charter, the Security Council should pay more attention to the provisions of Chapter VI and to the role that the Security Council should play in encouraging parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, to resort to the peaceful means for dispute settlement referred to in Article 33 of the Charter. In that regard as well, particular attention should be paid to the fact that parties should as a general rule refer legal disputes to the International Court of Justice in accordance with the provisions of the Statute of the Court. Recourse to Chapter VI would therefore help to strengthen the international rule of law in the settlement of international disputes that could threaten international peace and security.

The Security Council has had some notable successes in the deployment of peacekeeping missions in many conflict situations and peace-building efforts aimed at restoring justice and the rule of law in post-conflict situations. It is important to ensure the participation of local actors, so that they can feel that they are a part of the process of justice and reconciliation. In that regard, much has been accomplished in building up national systems of law and order, such as the training of local police and law enforcement officials and the strengthening of domestic legal systems, including national courts.

The Security Council's establishment of ad hoc tribunals to punish the perpetrators of grave crimes against the peace and security of mankind committed in specific conflict situations has proved successful, as in the cases of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). More recently, the Special Court for Sierra Leone, which has now indicted a number of the individuals most responsible for the atrocities committed there, has contributed somewhat towards ensuring justice for the victims of the crimes and their families. Those tribunals, together with truth and reconciliation commissions in post-conflict situations, have made a significant contribution to the search for justice and the restoration of peace, especially where individuals are able to participate in re-establishing the rule of law in their own societies.

While noting the success of those tribunals, the international community now has a permanent

International Criminal Court to bring to justice the persons responsible for precisely the types of crimes for which those ad hoc tribunals were created. In post-conflict situations, the capacity of national authorities to prosecute such crimes must be strengthened through appropriate forms of international assistance. On the other hand, the International Criminal Court (ICC) can make a significant contribution to international peace and security by requiring that justice be administered at the national level. The ICC operates on the fundamental principle of complementarity: the obligation for the State to prosecute remains, and it is only where national authorities are unwilling or unable to prosecute that the Court may step in. The ICC embodies an important principle first established by the Nuremberg Tribunal and further recognized by the Security Council through its inclusion in the statutes of the ICTY and the ICTR: no one is above the law and no one will escape punishment for such horrendous crimes.

In conclusion, observance of the international rule of law and justice for all peoples is the sine qua non for a just and peaceful world. The strengthening of the rule of law, both internationally and nationally, is the guarantee of the peaceful coexistence of all States and all peoples' enjoyment of those inalienable and fundamental human rights and freedoms with which all mankind is endowed.

The President: I thank the Minister for Foreign Affairs of the Republic of Trinidad and Tobago for the comments he addressed to the United Kingdom. I now call on the representative of the Republic of Korea.

Mr. Kim Sam-hoon (Republic of Korea): I would like to extend the appreciation of my delegation to the presidency for initiating this valuable discussion on justice and the rule of law. Throughout the history of the United Nations, the shared values of justice and the rule of law have served to unite the international community in its effort to prevent conflicts and re-establish ordered and equitable societies in regions of conflict.

From the experience of the United Nations in Bosnia and Herzegovina, Kosovo, East Timor, Sierra Leone and Afghanistan, we have learned that, in breaking cycles of conflict, establishing a credible system of justice and the rule of law is as crucial as providing security and basic humanitarian aid on the ground. A peace achieved without the foundations of justice and the rule of law may be tentative and fragile. We should thus view the institution of justice and the rule of law in post-conflict societies as an investment in a sustainable, durable peace. Reasserting the leading role of the United Nations in creating, advancing and maintaining global peace, the Republic of Korea believes that the Security Council should continue to integrate justice and the rule of law into the scope of its work in rebuilding post-conflict societies.

Against that backdrop, the Republic of Korea would like to highlight the importance of capacity-building at the local level. Experience has shown that, in order to translate the lofty principles of justice and the rule of law from rhetoric into action, these concepts must take root in the afflicted society at the grass-roots level. Public awareness and educational programmes have proved to be effective in that regard. However, these programmes represent, not an instantaneous solution, but rather a long-term commitment to gradual societal change. Moreover, it is important to note that a society will adopt these values only if they are promoted in a way that is compatible with the long-standing traditions and beliefs of its people. Therefore, we must tailor our approach to each unique situation.

Indeed, the process of establishing justice and the rule of law cannot take place in an atmosphere of impunity and violence. Without a system in place for addressing human rights violations and crimes against humanity, there can be no public confidence that the workings of its society will be fair, impartial and transparent, and thus there can be no momentum towards reconciliation and stability. We believe that the United Nations war crimes Tribunals in Rwanda and in the former Yugoslavia constitute constructive examples of judicial processes that have played a crucial role in securing justice in post-conflict societies.

However, as noted by the Secretary-General, the objectives of justice and reconciliation can sometimes be at odds. Somewhere between amnesty and uncompromising justice, each society must strike its own delicate balance that will enable it to establish sufficient justice to restore peace and to move onward from its violent past.

In contemplating these complex issues, inherent in propagating justice and the rule of law, we are always reminded of the constraints imposed upon our noble mission by the limited time and resources of the Security Council. While the Council should indeed

make every effort to carry out its mandate to secure global peace, the close coordination and cooperation among the various organs and institutions of the United Nations system and non-governmental organizations can be invaluable in implementing longer-term commitments to establishing the rule of law and justice in post-conflict societies. Through a careful and informed division of labour, we can prevent any overlap that might cause the overburdening of the Security Council while ensuring that the multifarious needs of all post-conflict societies are met.

In concluding, I would like to express the sincere hope of my delegation that our deliberations today will contribute to our common endeavour to safeguard the fundamental freedoms and interests of people in post-conflict regions through the promotion of justice and the rule of law.

The President: I now call on the representative of Brazil.

Mr. Sardenberg (Brazil): At the outset, I would like to thank you, Mr. President, for the initiative of bringing this timely subject to the attention of the Council. The issue of justice and the rule of law becomes even more relevant at a time when the Secretary-General and an overwhelming number of leaders are underlining the need for a thorough reassessment of the overall work of the United Nations system — specifically that of its main bodies.

I should like to begin by recalling that the General Assembly has made a fundamental contribution to this issue, as in recent years it has discussed and adopted a number of resolutions that serve to establish parameters for efforts in the promotion of justice and the rule of law. In the General Assembly, Brazil traditionally sponsors a resolution called "Strengthening of the rule of law", aimed at reaffirming the importance of this subject in the work of the United Nations.

General working guidelines are certainly important and helpful. Nevertheless, transforming theory into daily practice is a real challenge before the Organization and the Council as we face diverse situations and realities. There is no affordable one-size-fits-all approach, as the Secretary-General has already emphasized.

United Nations actions must always be based on the United Nations Charter and on international humanitarian law and human rights standards. The more disrupted and unstable a situation is, the more important it becomes to provide adequate responses and to make available a framework of legal guidelines and principles to confront lawlessness and to promote stability.

Among the conclusions of last year's report of the Executive Committee on Peace and Security task force on the development of comprehensive rule-of-law strategies for peace operations, I would highlight the priority assigned to the engagement of local actors — Government officials, local non-governmental organizations and community organizations — in undertaking rule-of-law operations. The United Nations should continue to consult with such actors as early as possible in the mission-planning process, as well as in all subsequent phases. Models are to be developed, not imposed. Our efforts should be aimed at paving the way for a smooth transition when the time for a mission's exit has arrived.

In order to ensure such an outcome, strong local institutions must be set up. Promoting the rule of law goes beyond defending a principle or even establishing a mechanism; it also involves creating material conditions for justice — namely, training law enforcement agencies, building correctional facilities, renovating local courts and assisting judges and lawyers.

I should like to stress three aspects of a successful role for an international presence on the ground. First, that presence must be neutral and willing to provide for inclusive participation by all sectors in the process of rebuilding institutions that may lead to a true and credible democratic society. Secondly, international actors must behave as facilitators, leaving no doubt that sovereignty belongs to the people themselves and that its restoration is the goal to be achieved. Thirdly, we must take a stern attitude when dealing with the legal fate of perpetrators of crimes against humanity. Omissions may send a wrong message in the shaping of a new reality on the ground.

The International Criminal Court is an achievement of paramount importance in the history of law. It clearly states that impunity is not acceptable, regardless of one's position or prestige. We call on all Member States to adhere to the Rome Statute so as to make that message even clearer.

Truth and reconciliation committees have proved to be effective instruments in facilitating the transition to a new reality. As demonstrated by the experiences of, among other countries, Timor-Leste and South Africa, finding ways to deal with the legacy of the past in a constructive and objective manner is an important aspect of the process of reconstructing societies. Finally, I believe that justice and the rule of law are indispensable to nation-building processes. The setting up of the Economic and Social Council ad hoc advisory groups dedicated to post-conflict situations in specific countries such as Guinea-Bissau and Burundi is a very useful step. It is highly advisable that coordination between the Security Council, the Economic and Social Council and other United Nations organs be reinforced in order to facilitate the reintegration of war-torn countries into the international community. Brazil will continue to contribute to this cause.

The President: I now call on the representative of Azerbaijan.

Mr. Aliyev (Azerbaijan): First, let me join the previous speakers in expressing our appreciation to the United Kingdom presidency for his timely and pertinent initiative in bringing the crucial issue of the role of the United Nations in ensuring justice and the rule of law to the fore of our attention.

It is not easy at this juncture of the deliberations to uncover any new, unspoken arguments in favour of the vitality of these two notions concerning the maintenance of international peace and security. Thoughtful consideration has also been given to the importance of the more ambitious role to be performed by the United Nations in this context.

The unanimity of views expressed by Council members last week, as well as by other speakers today, bodes well for the eventual increase in the ability of the United Nations to enforce these two pillars of the international code of conduct anytime and anywhere such a need arises. In this regard, one cannot but fully agree with the Secretary-General that "the rule of law is not a luxury and that justice is not a side issue". *(S/PV.4833, p. 2)*

The international community, and by this I mean in the first instance the United Nations and its Security Council, should be resolute, motivated and bold enough to promote and enforce international law anywhere necessary and to restore peace and security, including the undermined sovereignty, territorial integrity and political unity of its own Member States.

It should also be consistent in doing so, because otherwise the notorious practices of double standards and selective approaches that are unfortunately sometimes favoured by the international community will seriously shatter its credibility. The result of this is that the confidence in the role of the international community on the part of a victimized Member State is ruined and, at the end of the day, the victim of injustice might truly believe that it has to rely solely on its own means in righting wrongs and restoring justice.

Inaction or lack of sufficient action on the part of the United Nations in ensuring the implementation of its own decisions sends another wrongful and dangerous signal to the violators of justice and the rule of law. The latter begin to believe in their permanent impunity and thus lack any motivation to engage in the meaningful search for peace. Therefore, putting an end to this environment of impunity should be the primary role and responsibility of the United Nations.

With regard to a specific matter in question, namely the ongoing conflict between Armenia and Azerbaijan, how much longer will the United Nations and its Security Council turn a blind eye to a situation in which four of the Council's resolutions — 822 (1993), 853 (1993), 874 (1993) and 884 (1993) continue to be ignored by the aggressor State of Armenia?

How much longer will nearly 20 per cent of the territory of Azerbaijan, recognized as such by the United Nations, continue to remain under Armenian occupation? How much longer will the bitter suffering of nearly one million Azerbaijani refugees and displaced persons, who were ousted from their homes more than ten years ago and who face another winter in tent camps endure? Unfortunately these questions have remained unanswered during all these years. It is also unfortunate that the Security Council fell short of even naming the aggressor State, let alone taking concrete action against the country that has openly challenged the entire world by occupying and committing ethnic cleansing in another State's territory.

The United Nations should be able to respect its own decisions. If it wants to strengthen its image and role in tackling pressing international issues, it should openly challenge the attempts by some countries to behave on the basis of fait accompli and force them to

be guided by the letter and spirit of the founding document of this house organization, the United Nations Charter.

In conclusion, let me reiterate the view expressed previously by a number of delegations here, that the primacy of the rule of law must be the real and sole basis for the comprehensive settlement of ongoing conflicts, especially those inter-State conflicts that have resulted in the violation of the sovereignty and territorial integrity of United Nations Members States.

The role of the United Nations in this regard can hardly be overestimated. We genuinely believe that this debate will produce practical results and will not go down on the record as a futile discussion. I believe this will then be to the benefit of all those who desire the United Nations to be able to efficiently further its primary mandate.

The President: I now call on the representative of Denmark.

Ms. Løj (Denmark): At the outset I would like to fully associate myself with the statement made earlier by the Italian presidency of the European Union (EU). The EU has, for a number of years, both collectively and bilaterally placed strong emphasis on supporting justice reform and the rule of law in our development cooperation in general and in post-conflict situations in particular.

Allow me to offer a few complementary comments on these issues from a Danish perspective and to share some lessons learned from our own assistance efforts in three specific post-conflict situations.

We can only echo the call for ensuring the establishment of strong local institutions in post-conflict societies. But that does not exempt the international community from the obligation to assist in building rule-of-law institutions. On the contrary, the challenge is addressed through financial and technical assistance, transfer of know-how and advice to support local efforts and to be open to innovative ways of carrying through these efforts.

In this context, let me offer three examples where Denmark, in post-conflict societies, has sought to contribute to the rule of law.

Danish transitional assistance to Albania after the Kosovo crisis in 1999 consisted both of technical and financial support and was instrumental in setting up a number of rule-of-law institutions, including the office in Tirana of the Albanian Ombudsman.

Today the Ombudsman Office is processing impressive numbers of complaints from Albanian citizens, some of them leading to resolution of difficult problems between citizens and the State. The Office reports to Parliament and constitutes an important building block in the country's rule-of-law efforts.

The Danish Transitional Assistance Programme to South Africa, which was initiated in 1994, included support for the process of reconciliation and democratization by strengthening the democratic institutions and ensuring popular participation and the promotion of good governance, respect for human rights, accountability and efficiency in the public sector, particularly within the police and the judiciary.

The process in South Africa shows that reconciliation on the one hand and the very firm application of the law and legal justice on the other do not always sit together easily and that national reconciliation in post-conflict societies may require greater reliance on a process-oriented rather than a result-oriented legal process.

Finally, in the West Nile region of Northern Uganda, Denmark and other donors have been heavily involved in facilitating peace-building between the rebels and the Government of Uganda. A Peace Agreement was signed on 24 December 2002. The successful implementation of this Agreement is of key importance in promoting peaceful resolutions to other ongoing conflicts in Northern Uganda. This assistance to Uganda serves to illustrate the role of justice and rule-of-law assistance in what could be termed "pre-post-conflict resolution", that difficult period where bringing an ongoing conflict to the end by political means may mean hard choices between full justice and peace.

Overall, our experiences in supporting judicial reform and the rule of law seem to indicate the following important lessons learned.

First, close coordination between both bilateral and multilateral donors is of the utmost importance in order to avoid wasteful duplication and competition between different concepts and approaches.

Secondly, interventions in the legal area are often highly delicate and politically sensitive processes.

Impartiality is crucial, which gives the United Nations a comparative advantage. We would like to see the United Nations Development Programme further develop and target its capacity in that area. Broader interagency consultations between various United Nations actors on a possible division of labour and further specialization in that field should also be considered in order to better prepare and harness the United Nations to render assistance in the often very complex post-conflict situations.

Finally, we should also be cognizant of the possibilities of tapping into the vast resources of the community of non-governmental organizations (NGOs) in the areas of the rule of law and legal reform. Many local NGOs, including human rights groups and so on, are highly skilled and can sometimes, in cooperation with international NGOs or United Nations organizations, play an important and very cost-effective role in training and building capacity in the area of the rule of law in the public administration of many countries.

The President: I now give the floor to the representative of Bahrain.

Mr. Almansoor (Bahrain) (*spoke in Arabic*): The United Nations was created for noble purposes, among which were sparing future generations from the scourge of war and promoting respect for human rights so that everyone might leave in freedom and peace. The primacy of the rule of law, justice and respect for commitments stemming from treaties and other sources of international law are the real ways of building a society in which international justice reigns supreme.

The role of the United Nations, which includes promoting justice and implementing the primacy of the rule of law, is both important and crucial. The United Nations works to quell the conflicts that break out throughout the world and tries in equal measure to prevent conflicts. The Organization therefore plays an important role in the protection of civilians during armed conflict and in building and safeguarding peace and providing assistance to countries that want to maintain their independence in the various regions of the world. The United Nations has in fact been able to quickly lend its assistance to countries aspiring to freedom and independence. In that regard, we would like to salute the United Nations efforts to safeguard international peace and security throughout the world.

The fact that the United Nations was able to emerge from the difficult challenge it confronted prior to the war in Iraq is a source of satisfaction. It would be a good idea for all of us to adhere to a single vision, namely, to help the people of Iraq rebuild what the war has destroyed. In that connection, we must give the United Nations a greater and more important role so that it may prepare the people of Iraq to once again assume responsibility for full sovereignty of their country.

The Security Council has met on numerous occasions to address various issues. It has been able to act as a fair judge and to make praiseworthy efforts to promote the principles of justice and to assert the primacy of the rule of law. The United Nations has therefore played the role conferred upon it by the Charter.

At the same time, however, we have noted that the question of the Middle East has not always benefited from those efforts, as the principles of justice have been paralysed. The Security Council is in fact seized of the Middle East question. In that regard, however, we note that noble principles are often sacrificed to double standards. In fact, we often allow oppression and arrogance to prevail, thereby denying international justice vis-à-vis the Middle East.

The Government of Israel must implement the road map. It must permit the establishment of a Palestinian State that has Al-Quds Al-Sharif as its capital. The Government of Israel must also implement Security Council resolutions; otherwise the Palestinian people will continue to have the right to defend themselves and to resist Israel's unfair occupation.

We must distinguish between terrorism, on the one hand, and the right of a people to legitimate self-defence and to resist occupation by force, on the other. In the same vein, we hope that all the relevant international resolutions regarding the Arab-Israeli conflict will be implemented and that the Security Council will assume its duties with regard to the principle of ensuring international peace and security, which is enshrined in Article 24 of the Charter. We also hope that the Council will take all necessary measures under Articles 41 and 42 to guarantee justice for all mankind.

The President: That concludes the speakers' list as I have it.

There was a question of whether or not there would be a need to respond to some of the points made. Given the number of legal questions that have arisen, I propose, with the consent of the Council, to invite Mr. Hans Corell, the Legal Counsel of the United Nations, to take a seat at the table in accordance with rule 39 of the Council's provisional rules of procedure and to give a brief résumé from his particular expertise on actually where we are on this issue. That would be done with Mr. Annabi's approval — he is waving in response in favour of Mr. Corell. I am grateful to them both for their cooperation on this matter.

I give the floor to Mr. Corell.

Mr. Corell: I would like to start by referring to Mr. Guéhenno's statement this morning. As the Security Council will have noted, his statement was made on behalf of several Departments, including the Office of Legal Affairs.

But of course, for the Legal Counsel of the Organization this debate is important. No one could be more grateful than me and my staff in the Office of Legal Affairs that the Council is now discussing this matter. For someone who has devoted the better part of his career to these issues, it is heartening to see the Council now specifically addressing the question of the rule of law. I see that as recognition of the very close link that exists between peace and security and the rule of law. Several speakers have made reference to that fact. Out of those many I would just refer to the statement made by the representative of Argentina, who at this meeting said that

(*spoke in Spanish*)

> "Justice and the rule of law are the precondition for community life. Peace is not possible without them."

(*spoke in English*)

The phrase "rule of law" is often used, but what do we mean by it? To what law are we referring? Certainly, that is a law that must be adopted under democratic principles and in the observance of international standards. Some of the member countries of the Organization have the luxury of having had their law developed over centuries at the national level. Gradually that law has been adapted to present-day conditions.

In other societies, the situation is different. Several speakers made reference to local traditions. I had the privilege of meeting with the chief justices and ministers of justice of most countries in Africa at a conference in Abuja in February. It struck me, coming from a different tradition, what an immense task lies ahead of them, because there they have local traditions without which they cannot do. They simply have to have justice done at the very local level out in the villages, while at the same time being able to participate in the international community, in particular in international commerce, where the laws are set according to international standards of a very modern nature.

What I would like to point to here is that, when we speak we speak about the rule of law, it is important when one enters an area that one look carefully at the local traditions, but that one bears in mind the very important standards that this Organization has set in the field of human rights. I point to the 1948 Universal Declaration of Human Rights and the important documents derived from that Declaration.

In this sense, this issue goes far beyond peacekeeping operations. The Secretary-General himself, a few years ago, asked us in the Secretariat about what we thought were the most important issues he should focus on for the future. Needless to say, peace and security came out as number one. Number two was the rule of law in international relations and the rule of law at the national level. Now, he has been very faithful to that assessment and he constantly reverts to it. I refer members to his report before the Millennium Assembly, to which the General Assembly responded very forcefully in the Millennium Declaration. I refer in particular, if I recall correctly, to paragraphs 9, 24 and 25 of that resolution.

As to the rule of law, most speakers have focused on the justice system and the importance of having good administration. I would suggest that one could look at this as three pillars, the first being the parliament and the Government of the country itself. They are the first ones who have to observe the laws of the country — the Constitution and the laws they have themselves enacted. In a sense, they are the first ones who must bow to the dictates of the laws that they have passed. The second pillar is a responsible and accountable administration. I would suggest that the majority of the population in any society will always encounter the administration of the country, not

necessarily — and thankfully — the judiciary. Third — and this is what members of the Council have focused on — is an independent and impartial judiciary.

Who, then, is to form all this when assistance has been given and countries are left to deal with this on their own? Ultimately, it comes to the people who are set to exercise these functions — ordinary people who emerge from among the citizens of the country. There are three things, I think, that we should bear in mind here. The first is that these people must have sufficient knowledge of how the system works. They must have the necessary skills. Secondly, they must understand — and this is very important — that they are set to serve the society in which they work. Nothing else — they are servants of their societies. Thirdly, they must have the integrity to exercise their functions. Here, I would also focus on the more senior officials in any national system. They have to set the example as teachers and mentors of a generation.

Finally, by the same token, it is important that the Security Council take the lead in setting the example at the international level. The power of this Council is far-reaching. I think that this debate initiated by the United Kingdom becomes of great importance when the Council is seized with a matter, because then the situation at the national level is very precarious indeed. Many of the issues the Council has discussed today are difficult enough to cope with in the most organized society, so what, then, is the situation like in the States with which this Council is engaged?

Let us hope that the work in which we are all engaged will prove useful in developing our tools to assist populations in difficulties.

The President: There are no further speakers inscribed on my list.

I thank all those who contributed to the ministerial discussion and all those who have contributed today. I am conscious of the breadth of the challenge, the amount of work which has been identified and, indeed, of the number of different organs and agencies of the United Nations that are involved in this subject in one way or the other. The Secretary-General's report, which he will issue in due course, will be a response on behalf of the United Nations family to these issues. We very much envisage that this will be substantive and practical. It will address some of these issues, so that, in principle, taking a country coming out of conflict towards the restoration of the rule of law will be facilitated by the work that we have started.

But we have only started it in the Security Council in the past week. We have been reminded of all the other work that is going on and part of the challenge will be to bring that together so that there is a more coherent approach. Anyone wishing to submit comments in writing is very welcome to do so. The presidency will now reflect on what it can do to help further the work and may well issue a note under its own responsibility, trying to pull some of this together.

It would be remiss of me at the end of a month if I did not thank colleagues for their cooperation and the Secretariat for its assistance, especially the services of the interpreters and the security personnel, which have been an indispensable help to the presidency.

The meeting rose at 1.40 p.m.